

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF KANSAS

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

Docket No. 16-20032-02-JAR

6 KARL CARTER,

Kansas City, Kansas

Date: 10/09/2018

7 Defendant.

Day 6

8

9 TRANSCRIPT (EXCERPT) OF MOTIONS HEARING
10 TESTIMONY OF JOSH MARTIN
11 BEFORE THE HONORABLE JULIE A. ROBINSON
12 UNITED STATES DISTRICT JUDGE

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JOSH MARTIN

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* Denotes demonstrative exhibit

** Denotes admitted under seal

1 (8:36 a.m., proceedings commenced).

2 THE COURT: All right. You can be seated.

3 All right. Ms. Brannon, are you calling the next
4 witness?

5 MS. BRANNON: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. BRANNON: We would call Josh Martin.

8 JOSH MARTIN,

9 called as a witness on behalf of the Federal Public
10 Defender's Office, having first been duly sworn,
11 testified as follows:

12 MS. BRANNON: Your Honor, before we begin
13 with Mr. Martin, we would move by stipulation to admit
14 the following exhibits.

15 THE COURT: Okay, just a minute. All right.

16 MS. BRANNON: 560, 561.

17 MS. VANBEBBER: Excuse me, I think the
18 microphone is off.

19 THE COURT: Is that microphone-- I believe
20 mine is on. I don't know if mine-- yeah.

21 MS. VANBEBBER: There.

22 MS. BRANNON: 560, 561, 563 through 569 we
23 would offer under seal. 572, 573 and 667.

24 THE COURT: All right. Any objection?

25 MS. VANBEBBER: No objection.

1 MR. CLYMER: No, Your Honor.

2 THE COURT: Exhibits 560, 561, 572, 573, 667
3 admitted, and Exhibits 563 through 569 are admitted
4 under seal.

5 MS. BRANNON: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. BRANNON:

8 Q. Would you state your name for the record, please?

9 A. Yes. It is Joshua Paine, P-A-I-N-E, Martin.

10 Q. And, Mr. Martin, what do you do for a living?

11 A. I am an attorney employed by Securus
12 Technologies, Incorporated.

13 Q. And what is Securus?

14 A. Securus is a provider of inmate telephone
15 services to the corrections industry as well as
16 associated public safety-related products and services.

17 Q. About how big of a company is Securus?

18 A. We employ right around a thousand people. We
19 service over a thousand different customers, and we're
20 deployed at over 2,000 facilities.

21 Q. What do you-- day-to-day what do you do for
22 Securus?

23 A. My primary responsibilities-- while my title is
24 assistant general counsel and chief compliance officer,
25 my primary responsibilities are management oversight and

1 direction of our outside litigation, the
2 administration-- well, development and administration,
3 excuse me, of our compliance programs. I'm also
4 involved in informal dispute resolution with customers,
5 vendors, third parties, and I oversee our subpoena
6 compliance program.

7 Q. Because you oversee litigation, are you familiar
8 with the case pending in Western District of Missouri
9 the *Crane versus-- Johnson versus CCA and Securus*?

10 A. Yes, quite so.

11 Q. Have you been active in that in terms of
12 providing information from Securus for the litigation?

13 A. Yes.

14 Q. Okay. Same question with the-- the case here,
15 you're familiar with the litigation in *United States*
16 *versus Black*?

17 A. I am.

18 Q. Have you worked with the Special Master, David
19 Cohen, in providing information?

20 A. I have.

21 Q. And have you also worked with me in answering
22 subpoenas?

23 A. Yes, quite a few.

24 Q. All right. If we could look at Exhibit 565. To
25 begin with, I just want to ask you which facilities

1 within Kansas that Securus serves or has served. If we
2 flip over to the second page-- third page I guess.

3 A. Yes. So as reflected in the e-mail that
4 comprises at least a portion of this exhibit, we serve
5 Sedgwick County, Butler County, Shawnee County, and we
6 previously served Jackson County, and we previously
7 served CCA's Leavenworth Detention Center.

8 Q. Do you know when you stopped providing services
9 for CCA?

10 A. It would've been late summer, early fall of 2017.

11 Q. Part of the service that you provide to
12 facilities such as CCA is to record phone calls that are
13 outgoing from the inmates; is that right?

14 A. Yes. We provided at CCA-Leavenworth what I would
15 characterize as a barebones or plain vanilla deployment
16 of our inmate telephone system. And that is in broad
17 terms a voice-over Internet protocol enabled
18 telecommunication system that allows detainees or
19 inmates at our agency or facility customers to place
20 outbound telephone calls.

21 And in connection with that, the system provides
22 all the-- the telephone-- excuse me-- technology
23 necessary to, you know, route, place, complete, process
24 the call as well as generate recordings or not generate
25 recordings, depending on the particular, excuse me,

1 facility configuration. And it also generates what are
2 known as call detail reports, which is kind of a
3 detailed summary of the who, what, when, and where of a
4 telephone call.

5 Q. Was CCA's default to record all calls?

6 A. At CCA-Leavenworth, yes.

7 Q. You also service other CCA facilities; is that
8 right?

9 A. Yes. We previously serviced quite a few of CCA's
10 facilities.

11 Q. So for today when we're talking, we are referring
12 only to CCA-Leavenworth unless we state otherwise; is
13 that right?

14 A. Understood.

15 Q. Okay. Are there facilities that Securus provides
16 service to that choose to have a default of not
17 recording anything?

18 A. Yes. Juvenile facilities, at least in my limited
19 experience, almost exclusively do not record calls by
20 default. And I am aware of at least one adult detention
21 facility in north Texas that does not record calls by
22 default. There may be other examples, but probably very
23 few.

24 Q. Let's look at Exhibit 563, please. You mentioned
25 the call detail report. Can you define what a call

1 detail report is?

2 A. A call detail report is a standard collection of
3 data that we generate and retain in connection with
4 attempted or completed calls. And it contains a variety
5 of information, including things like the facility from
6 which the call originated, the number that was dialed,
7 the date and time of the call, the duration of the call.
8 Oftentimes, it will include the inmate or detainee name
9 that's placing the call as well as his or her account or
10 PIN number information. And there are other things that
11 are included in it as well, but that's what comes to
12 mind.

13 Q. So when someone obtains a-- an audio-recording of
14 a phone call, is it the call detail report that gives
15 that audio-recording some context?

16 A. I would say, yes. A call recording standing
17 alone would be simply the audio of the inmate or
18 detainee and the called party. And it doesn't have-- to
19 my knowledge at least, it doesn't have included or
20 imbedded within the audio file the details such as the--
21 well, the facility name might play, but it won't tell
22 you the date and time of the call or things like that.
23 You would need to reference the call detail report to
24 get that information.

25 Q. Did you work with me in providing information

1 regarding a case *United States versus Brenda Wood*?

2 A. Yes.

3 Q. And if you look at this Exhibit 563, I subpoenaed
4 at some point her call detail reports.

5 A. I recall that.

6 Q. All right. And just by way of example, if we
7 could walk through her call detail report. I think it's
8 a couple of pages over. There we go. Blow that up a
9 little bit.

10 All right. So the first column, that's cut off
11 just a little bit, but can you describe what's in the
12 first column?

13 A. The first column will typically display the name
14 of the facility at which the call originated. For
15 CCA-Leavenworth, there is additional information
16 contained within the parenthetical that follows
17 CCA-Leavenworth, KS. In this instance, it lists
18 default. That identifies the-- the agency affiliation
19 or site affiliation within the call platform as relates
20 to CCA-Leavenworth.

21 Q. Let's define a couple of terms. When you talk
22 about "facility," what are you talking about in this
23 context?

24 A. That's a difficult question to answer because it
25 is used in a variety of different ways. In broad terms,

1 facility in my mind means the-- the actual facility,
2 physical building from where the call is originating.
3 For example, Collin County, Texas, a former customer,
4 they have one county detention center and so the
5 facility would be that.

6 Leavenworth was configured a little bit
7 differently in that it had distinctions between
8 facility, which would cover 100 percent of the inmates,
9 and sites, which is a determine-- it's an imprecise
10 term, but it's the term that's used within our platform.
11 And that could typically be used-- if you think of a
12 state Department of Corrections context where there are
13 multiple correctional facilities, the contract or
14 facility level would be the department as a whole. And
15 then each site would be the separate stand-alone prisons
16 or penitentiaries.

17 In-- at CCA-Leavenworth, the site designator was
18 used by Leavenworth to segregate within the call
19 platform inmates associated with the three agency
20 customers that they provided services to at Leavenworth
21 Detention Center.

22 Q. In other contexts when we talk about site, if I
23 understand, that would refer to physical sites and
24 divisions among those physical sites?

25 A. That's correct.

1 Q. And within CCA, they chose to designate sites
2 based on the inmate population?

3 A. That's my understanding, yes.

4 Q. Okay. So when we talk about site in this
5 context, we're talking about sites at CCA. Can you tell
6 us what those sites are, what those divisions are?

7 A. Yes. There were three sites. The default site
8 is that associated with United States Marshal detainees.
9 There is a county site, which is for county detainees.
10 And I apologize, I can't remember the name of the county
11 as I sit here. And then they're a Maryland DOC site,
12 which is associated with Maryland Department of
13 Corrections that were housed by CCA in Leavenworth.

14 Q. Would the county be Wyandotte?

15 A. Yes. Thank you.

16 Q. Okay. So looking at this call detail report, the
17 site listed is the default site, which you described as
18 United States Marshals Service population?

19 A. Correct.

20 Q. Skipping over to the dialed number, is that just
21 what it says?

22 A. It is. It's the number that the inmate called or
23 attempted to call.

24 Q. Start time and end time?

25 A. The start and end time of the call.

1 Q. Let's talk about that for just a minute. First
2 name and last name. In this case it lists first name as
3 Wood, last name as Brenda. Did that cause us some
4 problems?

5 A. It did.

6 Q. Can you describe those?

7 A. If I recall correctly, you had-- your office had
8 issued a subpoena to us for Brenda Wood's call detail
9 reports. And a search was conducted using first name
10 Brenda, last name Wood, and either generated no results
11 or very few results. And we provided those to you.

12 And I believe you contacted me with some
13 information indicating you had evidence of other calls
14 that were completed. And after an inquiry, I determined
15 that Ms. Wood existed two ways within Leavenworth, one
16 as first name Brenda, last name Wood; one as first name
17 Wood, last name Brenda.

18 Q. The first name/last name, who enters that
19 originally?

20 A. CCA.

21 Q. So you were dependent in this context at least on
22 the accuracy of the information that CCA provides you?

23 A. Correct.

24 Q. All right. Is that true in other contexts as
25 well?

1 A. It is.

2 Q. Can you give us a couple of examples?

3 A. The one that springs immediately to mind is
4 information entered by CCA in connection with the
5 privatization of attorney numbers. The system-- our
6 system is technologically advanced in many respects.
7 But when it comes to the procedural mechanism of
8 determining whether or not it should record a call, it
9 is dependent upon the information that is entered into
10 the system either directly by CCA or in some instances
11 provided to Securus to be entered into the system on
12 CCA's behalf.

13 Q. If CCA enters the wrong phone number, for
14 example, to be privatized, do you have any way of
15 knowing that?

16 A. No. And, in fact, in the great majority of
17 instances-- let me back up slightly. The call platform
18 is designed to be-- to have administrative
19 responsibilities distributed out to our facility
20 customers. They want the ability to do things like
21 create user accounts, privatize numbers, make calls
22 free, block numbers, a variety of other things. And so
23 we-- we give them the tools to do that and the training
24 necessary to accomplish what it is that they want to
25 accomplish.

1 And the great majority of those actions they can
2 do without informing Securus or it otherwise coming to
3 our attention. The transactions are recorded within the
4 call platform, but we don't necessarily know. And so
5 we-- to answer your question directly, we wouldn't
6 necessarily even know that they had privatized a number
7 at all, much less that it had been entered incorrectly.

8 And that's particularly true, excuse me, because
9 the decision as to what numbers should be privatized and
10 at what level, that's within CCA's sole discretion. We
11 don't have the authority to do that. We maintain the
12 list for them, but the list is theirs. And so we
13 wouldn't even know that they got a request to privatize
14 a number, much less that they tried to do it, and much
15 less that it was done incorrectly.

16 Q. Can you think of reasons that a number that had
17 been requested to be privatized would still be recorded
18 after that request?

19 A. Yes.

20 Q. And can you tell us those reasons?

21 A. One would be, and I'm speaking in broad terms
22 here, general terms, across all our customer bases, it
23 could be a failure to comply with the request for
24 whatever reason. It could be that the-- a person
25 attempted at the facility to enter the number and

1 entered it incorrectly inadvertently. And Leavenworth
2 has an additional complicating factor, which I'm happy
3 to explain now if you like.

4 Q. I think we'll get to that.

5 A. Okay.

6 Q. Were there-- what about delay in entering the
7 number?

8 A. Absolutely delay. I mean, if there is not an
9 efficient process at the facility level to get the-- to
10 get the request and process it within a short period of
11 time, then yes, that could be another reason.

12 Q. Let's finish going through this example of a call
13 detail report. Agency type, USMS?

14 A. Agency type is a field that was used by CCA as
15 part of that kind of administrative segregation in the
16 computer sense of the various agency detainees they
17 have. So because they designated Ms. Wood as a United
18 States Marshals Service inmate, it shows up in the
19 agency type field, and it also explains why the site is
20 the default level in the first column.

21 Q. The call status column, can you tell us the
22 difference between complete and incomplete?

23 A. It is simply that. A completed call is one where
24 it reaches the point of positive acceptance by the
25 called party, who is then connected to the detainee. An

1 incomplete call is a call that fails to reach that
2 stage, which could happen for a variety of reasons.

3 Q. We've been defining some terms. Can you define
4 the difference between positive acceptance and passive
5 acceptance?

6 A. Sure. Positive acceptance is by far the great
7 majority of configurations that we deploy, and that
8 simply means that it requires the called party to take
9 an affirmative action, to press a digit on his or her
10 keypad, after hearing the order admonishment and hearing
11 that it's a call from a detainee. It's necessary to
12 complete the call.

13 We have it that way-- it's configured that way
14 largely because that's what our facility customers
15 require, but it also helps us an organization when it
16 comes to things like billing disputes. If there's an
17 affirmative act to accept the call, that helps us.

18 Passive acceptance is used sparingly, in my
19 experience only usually in connections with repeated
20 failed calls to someone who is, for example, hard of
21 hearing. And that will allow the call to be connected
22 without that affirmative step taking place by the called
23 party.

24 Q. If a number is set to be free, in other words
25 there's no charge for that call, do you know whether

1 it's set to positive or passive acceptance?

2 A. Can you repeat the question, please?

3 Q. If a number is designated to be free, no charge
4 for that number, do you know whether it's set to be
5 positive or passive acceptance?

6 A. I do not.

7 Q. Okay. If we go over a couple of more columns,
8 there's one that at the top says Priv, P-R-I-V. What's
9 that column for?

10 A. That column indicates that the number-- the
11 dialed number was designated as private at the facility
12 either for all inmates or for the inmate subpopulation,
13 the site that is placing the call. And it further
14 indicates that the call was not recorded.

15 Q. All right. If a number is private, that call is
16 just not recorded. Correct?

17 A. Correct.

18 Q. Okay. If we go down to the third row, the call
19 was to (816) 835-1000. In the private column, that
20 number was not marked private. Correct?

21 A. I see that.

22 Q. Okay. If we could flip over a couple of pages.
23 So a complete call detail report in this case was how
24 long?

25 A. I'm sorry, I don't understand the question.

1 Q. If we go to that last page. I just pulled a
2 couple of sheets out of this, but in Ms. Wood's case it
3 was 597 pages?

4 A. Oh. Yes, I see that.

5 Q. All right. Let's look at the next exhibit which
6 is 572. I talked about privatization. Privatization
7 essentially means no record?

8 A. Correct.

9 Q. Does it have any other meaning?

10 A. No.

11 Q. Okay. In 572, if we blow that up a little bit,
12 can you just describe what this represents?

13 A. So this document is a limited excerpt from what I
14 would call a master privatization report that was
15 produced by Securus in the *Crane* and *Huff* matters. And
16 this reflects the data that was captured by our system
17 that is associated by the transaction by which this
18 particular dialed telephone number represented in the
19 second column was made private on December 22nd of 2014
20 at about 8:22 in the morning.

21 Q. So after this privatization on that call detail
22 report, that privatization column would have an "X" in
23 it for this number; is that right?

24 A. It would regardless of the agency affiliation or
25 site level of the detainee placing the call. And I say

1 that because, the way this report was generated, you see
2 the contract info in the center and then site name to
3 the right of it.

4 If the-- if the number was made private for
5 100 percent of the inmates at Leavenworth, that site
6 name would be blank. If it was made private for a
7 limited inmate subpopulation, that site name would be
8 populated and it would tell us which subpopulation was
9 impacted.

10 Q. This action, does it mean that just Ms. Wood's
11 calls to this number are not recorded or all calls to
12 that number are not recorded?

13 A. All calls.

14 Q. The user name, what does that signify to you?

15 A. The most significant thing there is what follows
16 after the "@" sign. The way our system is configured,
17 user accounts for Securus employees or user accounts
18 created by Securus at the request of somebody else may
19 have a secur.tx after the "@" sign.

20 Here it is a little bit hard for me to see, but
21 it's I think a seven-digit character-- or string of
22 characters that reflects the contract identifier for
23 this facility within our system. And so that-- just
24 looking at that alone tells me that that is or was an
25 employee of CCA whose credentials were used to process

1 this transaction.

2 Q. Let's look at Exhibit 573. And while we're
3 pulling that up, you mentioned the *Crane-Johnson*
4 litigation. The information that we're looking at here,
5 where did you pull that from?

6 A. I would have to answer that in response to a
7 specific exhibit. But the majority of the information
8 we provided in response to your subpoenas that related
9 to privatization history or recording access logs were
10 generated by pulling subsets from the larger versions of
11 those same documents that we had produced in the *Crane*
12 case. And the smaller versions we pulled were those
13 that corresponded to the criteria either in your
14 subpoena or that we negotiated.

15 BY MS. BRANNON:

16 Q. 573, can you tell from that document where that
17 information was pulled?

18 A. This information would've been produced from--
19 let me back up slightly. In the *Crane* case and also in
20 the *Huff* case that's pending here, we produced a master
21 recording access log and a master privatization report
22 that reflected transactions associated with the numbers
23 contained in Special Master David Cohen's known attorney
24 telephone number list.

25 And in response-- as I suggested a moment ago, in

1 response to your subpoenas, we produced limited subsets
2 of that. This document would've been generated from
3 that master recording access log that was filtered based
4 on criteria provided by you.

5 MS. BRANNON: Your Honor, I think I
6 overlooked this, but we would ask for 573 to be under
7 seal.

8 MR. CLYMER: No objection.

9 THE COURT: 573 admitted under seal.

10 BY MS. BRANNON:

11 Q. If we flip over to the last page of this exhibit.
12 There are different ways you can run reports in your
13 system or run spreadsheets. Right?

14 A. Yes.

15 Q. And in this case, if you look down to the
16 requested numbers, can you describe what criteria you
17 ran to produce this report?

18 A. So this would've been-- we would've started with
19 all of Brenda Wood's transactions and then we would've
20 pulled out those that were related to calls to the four
21 numbers-- four numbers contained below the asterisk on
22 the bottom left corner at Page 7.

23 Q. We will talk more about accessing in just a
24 minute. But when you use the term "access," what does
25 that mean?

1 A. It refers to any transaction or activity within
2 the call platform that involves access to a call
3 recording.

4 Q. And when you look at this particular spreadsheet,
5 the second column, what does that tell you?

6 A. The type of activity that was performed.

7 Q. It shows that these calls were accessed?

8 A. Oh, yes.

9 Q. Okay. If you look at the next to last column,
10 does that tell you who accessed the calls?

11 A. It tells us whose user credentials were used in
12 connection with this-- these access events.

13 Q. And the last column?

14 A. The last column reflects the number to - boy, I'm
15 going to mess up my syntax here - that's the phone
16 number that was called that generated the recording that
17 was accessed, and that access event is reflected in this
18 document.

19 Q. The information that Securus receives when calls
20 are being accessed, does Securus record in any way why
21 the calls are accessed?

22 A. No.

23 Q. Does it record in any way who originally asked
24 for the calls to be accessed?

25 A. No.

1 Q. All you know would be that that user account is
2 the one that was used to access Securus' call platform?

3 A. That's correct, with one very minor exception
4 would be where in the event that a facility customer
5 contacted our technical support department and asked for
6 assistance in downloading calls, which happens from time
7 to time.

8 And as a general rule, who requested it and, at
9 least broadly speaking, the basis for a request; i.e.,
10 the facility received a subpoena, will be recorded by
11 help desk technicians in the ticket tracking system that
12 is used to record their activities.

13 Q. How often does that happen?

14 A. Very-- relatively infrequently.

15 Q. Let's look at just a couple of quick exhibits.
16 551. Do you know who Wayne Bigelow is?

17 A. Not directly. I know that he was employed in
18 some capacity by CCA and worked at the Leavenworth
19 Detention Center.

20 Q. This exhibit has already been admitted. Can you
21 tell us who Michael Kenyon is?

22 A. Yes. Michael Kenyon is an account manager at
23 Securus. And during the time that CCA was a customer of
24 ours, he was CCA's account manager. That was the sum
25 total of his responsibilities was to take care of the

1 CCA account.

2 Q. In this case does it appear that Securus is
3 actually setting up a user account for Mr. Bigelow?

4 A. Can I see the next page of the exhibit, please?

5 Q. Sure.

6 A. Yes.

7 Q. And why would Securus be setting up an account
8 for Wayne Bigelow?

9 A. As a courtesy in response to the question from
10 Kenneth Lajiness, if I'm pronouncing his last name
11 correctly.

12 Q. For a standard user account, can the facility
13 itself set up those accounts?

14 A. Yes. The facility has the ability-- they will
15 have an administrative-- administrator or super user
16 account that can be used to generate other user accounts
17 and define roles, responsibilities, things like that.
18 It's referred to as a security template.

19 As I sit here, it's not clear to me why
20 Mr. Lajiness would've been asking this of Michael
21 Kenyon. It could be he didn't want to do it himself and
22 it's easier to send an e-mail to Michael Kenyon.

23 Q. All right.

24 A. It might be because the user account that
25 Mr. Kenyon is creating for Mr. Bigelow is that

1 administrator level account, because I don't know if one
2 administrator has the ability to create another
3 administrator.

4 Q. If we go back to the first page, can you just
5 tell us what date the user name was set up for
6 Mr. Bigelow?

7 A. Yes. Mr. Kenyon e-mailed the credentials to
8 Mr. Lajiness with a copy to Mr. Bigelow on
9 December 2nd-- excuse me, December 10th, 2015.

10 Q. Let's look at Exhibit 550, please. And can you
11 tell us what this exhibit represents?

12 A. Yes. This appears to be an e-mail from Michael
13 Kenyon to Wayne Bigelow on July 27th of 2016, and he is
14 conveying instructions to Mr. Bigelow on how to
15 privatize a number at Leavenworth for all inmates.

16 Q. That's some seven months after Mr. Bigelow had
17 his user account set up?

18 A. It appears to be the case, yes.

19 Q. All right.

20 A. Is this the whole page of the exhibit or is there
21 another one?

22 Q. I'm not sure.

23 A. I was just curious if it reflected when
24 Mr. Bigelow asked Mr. Kenyon to provide him with that
25 information, and it looks like it was on July 27th of

1 2016 and Mr. Kenyon responded the same day.

2 Q. Very good. In the course of talking with me, did
3 you provide me some screenshots?

4 A. I did.

5 Q. All right. If we could look at 667, please. And
6 you've already talked about facility level/site level.
7 If we go up to the very top of this, can you describe
8 what those drop-down categories are?

9 A. I can, but I'd like to provide just a little bit
10 of context.

11 Q. Sure.

12 A. As I've discovered in the two-plus years that
13 I've been working on these issues, the terminology that
14 is used in this context suggests a degree of complexity
15 that doesn't exist, and it makes it hard to convey it
16 using the terms.

17 So I just want to talk about the privatization
18 process in broad terms. And then as we go through this
19 exhibit, I think we'll have a chance to marry those up
20 to the specific terms.

21 Q. Great.

22 A. If I'm at CCA-Leavenworth and I want to privatize
23 a number, I would go to this page and-- I'm sorry, to
24 the next page and I am selecting-- I need to put that
25 number on a list. And I have four lists to pick from.

1 Q. All right.

2 A. And the decision I-- well, once I pick a list,
3 all I need to do is type in the number, click the
4 "private" box and hit submit and the transaction is
5 complete and the system immediately recognizes that
6 number as a private one.

7 The important decision is which list I pick,
8 because there are four. And the first one will make the
9 number private for the entire facility. 100 percent of
10 outbound calls, regardless of a detainee's agency
11 affiliation will not be recorded. But there are three
12 smaller lists that are associated with the agency
13 subpopulations.

14 So there's a list for the whole facility, that's
15 the big one. And then there's a list for marshal
16 service inmates, a list for county inmates, and a list
17 for Maryland DOC inmates.

18 And if the number is privatized-- entered only on
19 the marshals service list, for example, calls from
20 marshals service inmates to that number will not be
21 recorded, but calls from county inmates to that number
22 will be recorded, and calls from Maryland DOC inmates to
23 that number will be recorded.

24 And throughout kind of the course of this, folks
25 have looked at the data, including David Cohen,

1 attorneys in the-- plaintiff's attorneys in the *Crane*
2 case, and your office and have identified instances
3 where the number-- a call was recorded after a
4 privatization request was submitted and entered.

5 And I just want-- it's important I think from
6 Securus' perspective for you and the Court to understand
7 that the data we produced in the *Crane* case shows that
8 the system worked as designed and as instructed
9 100 percent of the time. There is no example where a
10 number was privatized, for example, at the "all inmate"
11 list on January 1st, 2016, and calls were subsequently
12 recorded. It worked as designed.

13 I think the issues that have come up have arisen
14 because, for whatever reason, CCA decided to make a
15 number private for only one inmate subpopulation, which
16 prevented those calls from being recorded, but then
17 there would be potentially instances where, for example,
18 a county inmate or a DOC inmate called the same number
19 and the call was recorded because the platform by
20 default at Leavenworth records all calls unless
21 Leavenworth tells it not to. And absent an instruction
22 not to do it, it's going to do what it was originally
23 programmed to do, which is record all calls.

24 Q. I send my number in to be privatized by CCA. If
25 they don't choose from the drop-down, then that number

1 is privatized for all inmates. Correct?

2 A. Yes. And if you go to the next page, I think it
3 will illustrate that point a little bit better. So
4 after-- when you're navigating to the screen where you
5 want to privatize a number, this is the first page--
6 place that you land. And you'll see at the left there's
7 a management level, and it shows Leavenworth Detention
8 Center, because that's the facility that I'm personally
9 operating in in this screenshot. And then the site,
10 the-- the first box, the box that is present on the
11 screen when you get there is all sites, which is the all
12 inmate list.

13 Q. So if you just leave that alone and don't do a
14 drop-down, then that number that I sent in would be
15 privatized for all inmates?

16 A. Yes.

17 Q. If I send my number in and the drop-down goes and
18 whoever is entering my number chooses, for example, the
19 Maryland inmates, that means only Maryland inmates'
20 calls would be not recorded, but all USMS inmates would
21 still be recorded?

22 A. That's correct.

23 Q. Okay. And did you find that sort of error in
24 this litigation?

25 A. I don't know that I know enough to characterize

1 it as an error, but certainly I have seen examples where
2 numbers were privatized for one of those named
3 subpopulations and calls were being made to the same
4 attorney number by other inmate populations for which
5 the number was not made private.

6 Q. Is there anything else from this page that you--
7 we need to cover?

8 A. No.

9 Q. Okay. And the next page, does that just show the
10 different sites that can be chosen?

11 A. That's correct. It's showing the-- the three
12 subpopulation sites that can be selected. The only
13 other thing I would-- I would like to add here in
14 response to your preceding question, is if this entry
15 screen is used for things other than privatizing
16 numbers.

17 For example, if the facility wanted to make
18 numbers free, they would go in and do it here. That can
19 also be used to block calls to a particular number at
20 the request of the called party. And there's a few
21 other minor things, but those are-- it's used for more
22 than just privatizing calls.

23 Q. So you've defined "facility." You've defined
24 "site." I think you mentioned "global list."

25 A. Yes.

1 Q. Could you again define what that means?

2 A. Global list is a terrible misnomer and it gives
3 me headaches, because it suggests to a layperson that
4 the changes here are globally applicable. And they are,
5 but only on a limited basis based on the population
6 that's selected.

7 What the global list does is it allows a facility
8 customer to make exceptions to otherwise generally
9 applicable rules. So, for example, if the default is
10 "record," you would check "private" to make a call not
11 recorded. If the default is "do not record," you would
12 check "record" to-- to make it recorded.

13 So the changes are globally applicable in the
14 sense that they apply to calls to that number, but
15 they're not universally applicable in terms of the
16 eligible inmate population.

17 Q. I note that there's also a box that says
18 "active." Can a number be deemed inactive?

19 A. I do not know.

20 Q. All right. Can a number be deprivatized?

21 A. Yes.

22 Q. All right. Let's-- is that the last page of this
23 exhibit?

24 All right. Let's look at 568 and let's talk
25 about some actual instances of privatization. You

1 received this subpoena from me?

2 A. I did.

3 Q. And I'm requesting privatization reports of
4 certain numbers, limited numbers. Right?

5 A. Yes.

6 MS. BRANNON: And, Your Honor, for the
7 record, yesterday we filed a stipulation that identified
8 these numbers as the three primary numbers for our three
9 offices and our three (800) numbers.

10 THE COURT: Yes.

11 BY MS. BRANNON:

12 Q. So if we flip over a couple of pages and look to
13 the actual privatization log. Let's go back to that
14 first page. All right. So if we look at that first
15 column and blow that up a little bit, let's just walk
16 kind of quickly through this.

17 The dialed number, is that the number to be
18 privatized?

19 A. It is.

20 Q. Modified field, what does that mean?

21 A. That was captured in the preparation of this
22 report to demonstrate that that's what this report
23 reflects, our privatization transactions within the
24 various global lists, not other transactions.

25 Q. The blank column "Before."

1 A. Is a null value. It means that this number did
2 not previously exist on the global list or had not
3 previously-- yeah, that's correct.

4 Q. Okay. "After" just means that it was actually
5 privatized and that was the modification?

6 A. Correct.

7 Q. The date?

8 A. The date and time that the transaction occurred.

9 Q. So this would represent that that number was
10 privatized on October 14th, 2009?

11 A. Correct.

12 Q. Go over to site name. What does that tell you
13 about the privatization in this case?

14 A. That will tell the inmate subpopulation, if
15 applicable, for which this number was made private.

16 Q. And in that case it was county?

17 A. Correct.

18 Q. Which means Wyandotte County inmates would have
19 private calls, but United States Marshals Service would
20 not?

21 A. Correct.

22 Q. And looking at this internal description, that
23 refers to Federal Public Defender numbers should be free
24 and not recorded as required by USMS?

25 A. I see that.

1 Q. Was this before your time at Securus?

2 A. Oh, it was. It was.

3 Q. All right. Let's drop down to the third row.

4 The 9828, for the record, is the main number at our
5 Topeka office. When does it show that that number was
6 privatized?

7 A. October 26th of 2011.

8 Q. And the site that was privatized?

9 A. The default site, which is applicable to United
10 States Marshals Service inmates.

11 Q. So Wyandotte County inmates' calls to that number
12 would still be recorded?

13 A. Yes.

14 Q. Okay. And we can see this on the callout. The
15 next row references Jason Shidiskis, I don't know if I'm
16 saying that right. Do you know who that is?

17 A. Not directly, but-- I've never personally met
18 him, but Mr. Shidiskis is an employee of an entity
19 called Praeses, spelled P-R-A-E-S-E-S. And Praeses is--
20 functions as-- the best way I can think to describe
21 them, as a third-party administrator for facilities who
22 have inmate telephone services.

23 They assist in things like preparation of
24 requests for a proposal, describing mandatory
25 requirements, evaluating responses. And then they

1 generally assist in the administration of the account on
2 behalf of their customer, in this case CCA.

3 Q. This is still addressing on this row the 9828
4 number was modified to private. Why would there be a
5 subsequent modification to private?

6 A. I wouldn't characterize it necessarily as a
7 modification, but rather a new privatization event
8 because we do have those four separate lists. So the
9 first transaction we looked at is the transaction on the
10 default list. The subsequent transaction, excuse me,
11 the site name field is blank, which tells us that this
12 was privatized for all inmates. As to why Mr. Shidiskis
13 went in and did that at that time, I do not know.

14 Q. So the change that would affect the 9828 number
15 is that all inmates at CCA, their calls would not be
16 recorded to that number?

17 A. Correct. The privatization would no longer be
18 limited to marshals service inmates.

19 Q. All right. Let's look at Exhibit 564. This is
20 another subpoena from the FPD to you. And in this we
21 asked for specifically - if we can go down a couple - a
22 call detail report to all of our numbers; is that right?

23 A. I don't know that those are all of your numbers.

24 Q. Fair enough.

25 A. But certainly for all of the numbers that were

1 listed in your subpoena.

2 Q. And your system allows you to run specific
3 numbers through to see when all of those numbers
4 would've been privatized?

5 A. No. The data exists within the platform. It can
6 be extracted using a canned or pre-programmed reporting
7 functionality only on a limited basis. It's very
8 difficult to do, for privatization events. So it's
9 necessary to go in through the back end of the database
10 and obtain that data.

11 Q. All right. Let's look at 567. And if we flip
12 over, there was an occasion that I asked for--

13 I'm sorry, I-- I missed something on 564. If we
14 could go back to that. So I was asking for call detail
15 reports to these numbers. If we flip down to the call
16 detail report itself, what did this show?

17 A. This appears to be an excerpt from one of the
18 call detail reports that we produced. The data was
19 provided in Excel format, which it allows-- the
20 formatting can be manipulated.

21 So, for example, this has certain columns that
22 appear hidden. It goes A, B, E, for example. But this
23 reflects certain portions of the call detail report
24 associated with the numbers-- at least some of the
25 numbers in your subpoena.

1 Q. If we look at row 22-- 22, and I'm sorry this is
2 so small. But if we look at 22, CCA-Leavenworth is the
3 default. Does that mean that inmate is a USMS?

4 A. In row 22 or 23?

5 Q. Let's look at 22 first.

6 A. Okay. Yes, that-- the default listing there
7 tells us that this was an inmate associated with the
8 marshal service by CCA.

9 Q. The call was to 9828. Correct?

10 A. Yes.

11 Q. It has the date and time?

12 A. I see that.

13 THE COURT: Can I ask something for
14 clarification? I'm sorry. So when-- so default
15 signifies only USMS inmates or does it signify all
16 inmates?

17 THE WITNESS: Only United States Marshals
18 Service inmates, Your Honor.

19 THE COURT: Okay.

20 BY MS. BRANNON:

21 Q. If you look across this row, Mr. Davis' call to
22 the 9828 number, was that recorded?

23 A. Yes. There is no "X" in the private field, which
24 tells me that it was recorded.

25 Q. If we look at row 23, the number to 6712, which

1 is, for the record, our main number in Kansas City,
2 Raymond Hickman, when he dialed that number, even though
3 it was incomplete, was that call recorded?

4 A. No.

5 Q. If we go down to the next row to that same
6 number, 6712, on that same date by a different inmate,
7 the call was complete. Was that call recorded?

8 A. It was.

9 Q. Can you explain why one call to our front desk
10 would be recorded and one would not on the same day?

11 A. Because of the reasons we've previously
12 discussed. The call reflected in row 22 was placed by
13 an inmate associated by CCA with county inmates, and
14 that call was marked as private.

15 The subsequent call was placed by an inmate
16 associated by CCA with the default, or United States
17 Marshals Service, and that call was recorded, which
18 tells me that this number could only have been
19 privatized at the county level and perhaps the Maryland
20 Department of Corrections level at the time it was made
21 and was not privatized at the default level.

22 Q. The 6712 on that date was privatized for
23 Wyandotte County inmates but not for United States
24 Marshal inmates?

25 A. Yes.

1 Q. Okay. Thank you.

2 SPECIAL MASTER COHEN: Excuse me, I don't
3 have the screen, so I'm not looking at what you're
4 doing. Are the two numbers that you just talked about
5 going to the-- one was-- were they the same number?

6 MS. BRANNON: Yes.

7 SPECIAL MASTER COHEN: To the front desk?

8 MS. BRANNON: Yes.

9 SPECIAL MASTER COHEN: Exact same number on
10 the same day?

11 MS. BRANNON: Yes.

12 THE COURT: The number was (913) 551-6712.

13 MS. BRANNON: Correct.

14 BY MS. BRANNON:

15 Q. And, in fact, those two calls were less than an
16 hour apart. Right?

17 A. It appears that way, yes.

18 Q. So if we look at the next exhibit, 567, after you
19 provided me with the call detail reports of the FPD
20 offices, FPD office numbers, I gave you a subpoena
21 asking for the call detail reports of three specific
22 people; is that right?

23 A. Yes.

24 Q. And for the record, these are all my clients, my
25 personal clients. I have the names listed two different

1 ways. Why is that?

2 A. Based on what you told me, to avoid the
3 Brenda-Wood, Wood-Brenda situation we faced earlier in
4 the year.

5 Q. I asked for call detail reports and the actual
6 call recordings; is that right?

7 A. You did.

8 Q. The actual call recordings are just that, it
9 would've been the substantive conversation between me
10 and that client if there was a substantive conversation?

11 A. Yeah, it would've been audio of the conversation
12 between the called party and the receiving party.

13 Q. In that instance, the calls to the 6712 that were
14 not privatized, do you know if there would've been a
15 preamble on those calls?

16 A. Yes, the-- by preamble, do you mean the
17 admonishments?

18 Q. Yes.

19 A. Yes, the admonishment plays for all non-private
20 calls.

21 Q. So the first call to the six-- the-- that one
22 number that was privatized would not have had the
23 admonishment, the one less than an hour later would've
24 had the admonishment?

25 A. Yes.

1 Q. All right.

2 A. The difference between the two would be: "This
3 call is subject to recording and monitoring," would've
4 been played for the non-private call but not the-- but
5 not for the private call. I think the remainder of the
6 preamble would've been the same. "This is a collect
7 call from an inmate at Leavenworth Detention Center."

8 Q. All right. Let's look over and see what you
9 discovered when you ran this request. Did you find any
10 actual recordings?

11 A. I don't recall.

12 Q. Do you recall having a conversation with me about
13 when your-- when Securus actually purged recorded calls?

14 A. Yes. Yes, I do. So, no, there were no call
15 recordings responsive to this subpoena.

16 Q. Does that mean no call recordings ever existed?

17 A. No.

18 Q. What happened to those recordings?

19 A. Securus retains call recordings for a period of
20 time that is specified in the contract with our
21 particular customer, and it can vary. CCA's recording
22 retention period was five years. And although purging
23 of calls was suspended in 2016 for certain internal
24 business reasons and had not resumed at the time a
25 litigation hold was put in place in connection with the

1 issues that came to light here, those call recordings
2 would have been purged from the system, at which point
3 they are irrevocably gone.

4 Q. Available-- actual call recordings are available
5 for five years in this instance and not available after
6 that?

7 A. That's correct.

8 Q. Did you have other data that confirmed that the
9 calls were actually recorded?

10 A. The CDR itself confirms that the call was
11 recorded by virtue of the values in Column T. If the
12 private field is blank, the call was recorded. If it is
13 "X"'ed, it is not.

14 Q. And so looking at this, this is a call detail
15 report for those three clients. Correct?

16 A. Yes.

17 Q. And it indicates that none of those calls were
18 privatized?

19 A. That's correct. None of those numbers were
20 private at the time the call was placed, or at least not
21 private at the default/United States Marshals Service
22 level.

23 Q. If we look over-- the first column, site default,
24 all of these are marked as "default," meaning that they
25 are USMS clients?

1 A. Meaning that CCA has designated them as such
2 within the platform.

3 Q. And none of the United States Marshal Service
4 clients' calls to our offices were privatized?

5 A. That's correct. None of these numbers appear to
6 have been private at the time the calls were made.

7 Q. That doesn't mean that those numbers-- well, let
8 me ask it this way: Those numbers could've been
9 privatized as to the Maryland populus, for example?

10 A. Maryland DOC or county inmates, yes.

11 Q. Okay. Let's look at the next page. If you look
12 in-- the term "category," it requires positive
13 acceptance?

14 A. Yes.

15 Q. So that means we have to push a button to get the
16 call?

17 A. Correct.

18 Q. All right. Let's talk about user access
19 accounts. You defined "access" earlier. Can you tell
20 us what you mean by "user access accounts"?

21 A. I don't know that user access account is a term
22 that I would use. Are you referring to user accounts?

23 Q. Okay.

24 A. So a user account would be an account created by
25 a facility for an authorized user of the platform, or

1 their-- their aspect of the platform.

2 Q. And my confusion comes from a user account can
3 access calls on the Securus platform?

4 A. If they have the appropriate privileges, yes.

5 Q. If a user account is set up through CCA, can that
6 user access all calls on the Securus platform?

7 A. No, only those associated with the-- with
8 CCA-Leavenworth.

9 Q. So a user account set up at CCA, they couldn't
10 access federal detainees housed at Sedgwick County, for
11 example?

12 A. No.

13 Q. Okay. You testified earlier that generally it is
14 the facility that sets up these user accounts. Does
15 Securus limit the number of user accounts that a
16 facility can have?

17 A. Not to my knowledge, no.

18 Q. Do you set any sort of parameters or restrictions
19 on user accounts?

20 A. User accounts created by facilities?

21 Q. Uh-huh.

22 A. We do not.

23 Q. So a facility could create a user account for
24 anyone that facility chose to do so?

25 A. Yes.

1 Q. All right. Let's look at Exhibit 594. This was
2 previously admitted by Captain Schechter at Sedgwick
3 County. This particular exhibit, was that generated
4 from the Securus platform? Do you recognize that as
5 being generated from the Securus platform?

6 A. I do.

7 Q. Throughout this, when I've talked about a user
8 account showing up on access logs, I think you've
9 corrected me a couple of times that it's not necessarily
10 the person with that user account that's accessing the
11 logs; you can only tell that it's that user account?

12 A. That's correct. The credentials associated with
13 that user account.

14 Q. So if someone had given their user account
15 credentials to someone else to access, there's no way
16 Securus would know that?

17 A. No, although we strongly encourage them to be
18 responsible with their user accounts. But, no, if they
19 had shared it, we would be unaware.

20 Q. If you look over in the e-mail, those e-mails are
21 the e-mails associated with the user name?

22 A. Those would be the e-mail addresses that were
23 entered at the time the-- this-- these user accounts
24 were created.

25 Q. All right. If we could go over another page.

1 MR. BELL: I'm sorry?

2 MS. BRANNON: One more page. All right. I
3 was just looking for something. If I could have just a
4 moment, Your Honor?

5 THE COURT: Yes.

6 MS. BRANNON: And one more page, please,
7 Branden. And one more, please. Two more. I'm trying
8 to get down to the Ms in the last name-- in the last
9 name column. One more page.

10 BY MS. BRANNON:

11 Q. All right. I'm not finding it. Let's go ahead
12 and switch to Exhibit 599. So, Mr. Martin, when you
13 have a user account, can you run a report that says this
14 user accessed the Securus platform when and what they
15 obtained?

16 A. I believe so.

17 Q. You can run a report just for that particular
18 user account; is that right?

19 A. Actually, I do not know that for sure. Although
20 it appears from this document, if I'm looking at the
21 search criteria, those-- if the format here is similar
22 to other Securus reports that I'm familiar with, those
23 reflect the search criteria that was used to generate
24 this report. And the format of this document tells me
25 that it is a pre-- pre-generated report, that is a

1 canned report.

2 Q. Right.

3 A. And so it looks like a report was run here for a
4 user with the last name O'Neal, all activity type, over
5 a specified date range. So I would assume that that is
6 a standard reporting functionality.

7 Q. All right. Give me just one moment.

8 Securus doesn't control who has a user account,
9 but your record does show what user accounts were set up
10 for a particular facility. Correct?

11 A. Absolutely.

12 Q. And that's why in that last exhibit Securus-- a
13 Securus report is run showing everyone who has a user
14 account through Sedgwick County?

15 A. I'm assuming that that was the criteria used to
16 generate that report, yes.

17 Q. All right. Did you run a similar report for me
18 for CCA?

19 A. Yes.

20 Q. Okay. Let's just go ahead and go to 569, please.
21 Is that the report? Branden, if we could go to 569.

22 A. Yes.

23 Q. When we look at the-- when we compare the e-mails
24 to the user names for CCA, does it appear that almost
25 all of the users-- user accounts are CCA employees?

1 A. Can you expand or zoom in on that column? I
2 can't quite read it on the screen.

3 Q. On the e-mail column?

4 A. Yes.

5 Q. [REDACTED] is listed; is that right?

6 A. Correct.

7 Q. There's one for Praeses. Right?

8 A. Correct.

9 Q. And I think there's one for Securus, would that
10 be right?

11 A. I don't see it on this page unless I'm missing
12 it, but I would not be surprised in the least to see
13 Michael Kenyon as having an account.

14 Q. When a user account is set up, different users
15 have different authorities as shown by advanced user,
16 full access and so forth; is that right?

17 A. That's correct. The system, excuse me, includes
18 a variety of-- they're called security templates, that
19 are pre-generated consistent with what we found to be
20 the kind of user profiles that our customers require.
21 Those can be customized.

22 For example, Mr. Cohen's, he has a template
23 called Special Master. I wager his is the only one of
24 those in our platform. But, yes, it's very granular in
25 the types of privileges that can be granted to an

1 individual user either based on standard or custom
2 complex.

3 Q. Right under Mr. Cohen's name is Matthew Collins,
4 and it says "full access"?

5 A. I see that.

6 Q. Would Mr. Collins be able to access the Securus
7 platform to get recorded phone calls?

8 A. I don't know. I don't know exactly what is meant
9 by "full access." It's I think a reasonable conclusion
10 that that's the case, but I don't know for sure.

11 Q. Let's switch over to some other documents that
12 you produced for our office. Exhibit 566. At some
13 point-- that last page, please.

14 At some point I asked for all recording access
15 logs made between 2010 and 2018. Is that a lot of
16 documents?

17 A. It is.

18 Q. Okay. Based on our conversations, what did you
19 initially provide me instead?

20 A. I provided you-- I believe you provided me with a
21 list of FPD detainees at CCA-Leavenworth, and then I
22 identified for you those that had their call recordings
23 accessed. You can tell from my tone of voice I'm not
24 100 percent confident in that answer.

25 Q. You gave us a list of 1,600 names of people whose

1 calls had been accessed. Does that refresh your memory?

2 A. Yes, that's correct. Yes. Thank you.

3 Q. And after you provided that, did I send a smaller
4 list of names back to you?

5 A. You did, in ten consecutive sets or batches.

6 Q. And for those names in those ten batches, what
7 did you return to us?

8 A. We returned excerpts from the master recording
9 access log produced by Securus in the *Crane* and *Huff*
10 litigations, excerpts that were associated with the
11 detainees identified by you in those ten lists.

12 Q. For every name that we provided, you provided a
13 spreadsheet of calls accessed for that detainee?

14 A. Correct.

15 Q. All right. Let's look at an example on Page 3 of
16 this exhibit. If we could blow that up.

17 All right. Name, William Mitchell. Let's walk
18 across these columns. Access time means what?

19 A. The date and time at which this particular
20 recording was accessed.

21 Q. Recording usage. Tell us the categories of
22 recording usage available.

23 A. There are four that I'm aware of. Playback,
24 which is just that, someone listening to the call. Save
25 to folder, which refers to the ability to save call

1 recordings to a folder within the call platform itself.
2 For example, if I am investigating-- conducting an
3 investigation associated with a particular court case, I
4 may have a folder with that court case name. And when I
5 find calls of interest, I copy them into the folder.
6 That's usually, I'm guessing, done as an act either so
7 that you can find them again easier, more easily in the
8 future, or as an act prefatory to burning a CD.

9 Downloading is also an option, which I believe--
10 I believe it's downloading the call-- the call recording
11 on your local computer.

12 Q. The first category you mentioned, call playback,
13 does that mean that a user can call directly-- or tap
14 directly into Securus' platform and listen to a call
15 without downloading it and burning it or saving it to a
16 folder?

17 A. Yes. A user with the appropriate credentials
18 could search for a call recording based on any number of
19 criteria and then listen to that call without taking any
20 other action.

21 Q. The access to Mr. Mitchell's phone calls, it
22 shows both CD burning and save to folder. Can it be
23 that a call-- one call was both burned to a CD and saved
24 to a folder?

25 A. Yes. In my experience, the two normally go

1 together, similar to what we see here where we have-- I
2 don't want to assume, but a lot of times you will see
3 ten transactions that are saved to a folder. And then
4 following shortly thereafter in time, ten transactions
5 for the same calls for CD burning.

6 Q. Every line of data does not represent a different
7 unique phone call?

8 A. No. Every line of data with the same recording
9 usage flag would represent the same phone call, but you
10 could have ten calls with CD burning, followed by the
11 same ten calls with saved to folder.

12 Q. All right. Let's look at-- well, you mentioned
13 this access time was 6-19 of 2013. Let's flip over to
14 Page 4. When we blow that up, we're still looking at
15 William Mitchell. Right?

16 A. Yes.

17 Q. Go over another page, please, Branden. All of
18 these 6-19-- all these calls were accessed on 6-19; is
19 that right?

20 A. Yes, 6-19 of 2013.

21 Q. It includes call start time, call end time. The
22 user, what does the user tell you?

23 A. That tells me who-- which user account's
24 credentials were used to access this call recording.

25 Q. Last column, obvious, the number that was dialed?

1 A. Correct.

2 Q. And, therefore, the number that was recorded?

3 A. Yes.

4 Q. The call would not be listed on the access log if
5 it was not recorded?

6 A. That's correct. Recording access logs
7 transactions require an underlying recording to be
8 accessed.

9 Q. All right. Let's go through another couple of
10 pages. Okay. If we blow this page up.

11 If you look down towards the bottom of the page,
12 it shows access on April 2nd of 2014?

13 A. I see that.

14 Q. What does that represent?

15 A. That tells me that on April 2nd of 2014, a
16 variety of calls here related to William Mitchell were
17 accessed by the M. Collins CCA user account.

18 Q. Just walking through the mechanics, if you know,
19 when someone is accessing calls in this manner, how did
20 they gain access to the Securus platform?

21 A. They would have to have appropriate credentials,
22 and then they would access-- they would log in. And
23 then, presumably, they would-- the landing page for any
24 facility is the call detail report search page. They
25 would have to input their criteria for whatever calls

1 they were looking for, and there's a variety of ways to
2 do it. And then they would hit search, and that would
3 generate an on-screen call detail record.

4 And then from there, there are additional steps
5 that would need to be taken in order to do any of these
6 transactions. I can't speak to what those are because I
7 do not have access-- my template does not give me access
8 to call recordings.

9 Q. If we look at Exhibit 607, down to Page 7. Okay.
10 This particular exhibit, can you explain what this is?

11 A. This looks generally consistent with an-- an
12 automated e-mail that can be generated, I believe but am
13 not certain, through the download access event that
14 sends an e-mail to a recipient specified by the user,
15 which contains a link that can allow the user to
16 download a CD image, an ISO image of whatever calls were
17 selected by the user who initiated the e-mail.

18 Q. Whoever receives this link can download those
19 calls from Securus?

20 A. Yes, for a limited period of time.

21 Q. When Mr. Hall at the top received this e-mail,
22 can he forward this e-mail to someone else who can then
23 use that link?

24 A. I am certain that the e-mail could be forwarded.
25 I do not know if the system prevents access from someone

1 other than the e-mail's original recipient.

2 Q. Let's flip over to Exhibit 486. Generally, if a
3 request is submitted for all recorded-- you know, all
4 calls from a particular inmate without specifying any
5 numbers, what is then provided?

6 A. Request is submitted to whom?

7 Q. So all recorded calls for that inmate would be
8 available and provided.

9 A. Are you talking about if Securus received a
10 request?

11 Q. Yes.

12 A. So, for example, yes, if we received a request
13 from your office that said you would like all calls
14 placed by Brenda Wood or Wood Brenda, then assuming we
15 intended to comply with the subpoena, we would provide
16 you with all call recordings that existed, as well as a
17 complete CDR for all calls within the specified time
18 period.

19 Q. If we look at this particular e-mail, it says
20 something about purged phone number and asking
21 essentially to exclude calls to a certain number.
22 Securus can do that in producing phone calls; is that
23 right?

24 A. Yes.

25 Q. Does excluding a certain phone number mean that

1 that number is privatized going forward?

2 A. Merely by the act of Securus excluding it from a
3 production?

4 Q. Yes.

5 A. No.

6 MS. BRANNON: If I could have just one
7 moment, Your Honor.

8 BY MS. BRANNON:

9 Q. Mr. Martin, let me clarify one thing. If a
10 number is privatized, is a call to that number not
11 recorded at all, or is it recorded but unavailable in
12 any of the databases?

13 A. It's actually a third option.

14 Q. Okay.

15 A. If a call is-- if a call is set to private, no
16 portion of the call that occurs post-connection is
17 recorded. In some instances, the-- a recording will
18 automatically be generated of the admonitions or
19 messages that are playing to the inmate. I tend to
20 refer to it as a stub recording. And those are
21 generated also for incomplete calls. And those
22 recordings will exist for a very limited period of time,
23 about 30 days is my understanding, before they are
24 automatically purged from the system.

25 But to answer I think the-- the thrust of your

1 question, if a call-- if an inmate calls a number set to
2 private, there is no recording of the conversation that
3 takes place, not a recording is generated that is
4 somehow unavailable.

5 MS. BRANNON: Thank you, Mr. Martin.

6 THE WITNESS: You're welcome.

7 SPECIAL MASTER COHEN: Thank you, Judge.

8 CROSS EXAMINATION

9 BY SPECIAL MASTER COHEN:

10 Q. Hi, Josh. We've had dozens of phone calls
11 together.

12 A. We have. It's nice to meet you in person.

13 Q. Likewise. Thank you.

14 A. Sure.

15 Q. And we usually refer to each other as David and
16 Josh, but today I guess I'll call you Mr. Martin.

17 A. I understand, Mr. Cohen, and I will return the
18 courtesy.

19 Q. Thank you. So I want to go over just a little
20 bit of what Ms. Brannon discussed to make sure that I
21 understand it as well as clarify a few things.

22 First of all, there is a difference between a
23 number that is blocked and a number that is privatized.
24 Correct?

25 A. Yes. A number that is blocked is one that cannot

1 be called.

2 Q. Okay. So sometimes people have used the term
3 blocked, but privatized means the number can be called
4 but isn't recorded, as opposed to a number that is
5 blocked, which means the number cannot be called by the
6 inmate at all; is that right?

7 A. Correct. They're very different contexts.

8 Q. Okay. And at CCA, there were references by folks
9 who worked there and in e-mails and documents and so on
10 about numbers that were restricted or privileged, but
11 those are not terms that you use; is that right? You
12 would use privatized?

13 A. Yes. I don't think I-- I certainly would not use
14 the term "privileged," if only because a number can be
15 privatized for any number of reasons, not necessarily
16 attorney numbers; clergy, medical professionals, things
17 like that.

18 Restricted in my mind has a general connotation,
19 not specific to CCA, of a number that, for example,
20 can't be called-- can only be called during certain
21 periods of the day or only on certain days. But that
22 is, at least in my experience, a relatively limited
23 occurrence.

24 Q. Okay. And as far as you know, did CCA have the
25 ability to restrict a number in that way?

1 A. I do not know.

2 Q. Okay. You-- you were looking at Exhibit-- I
3 think it was 524 with Ms. Brannon. And there were two
4 numbers that were the same number but one was recorded
5 and one was not. Do you recall that?

6 A. I do.

7 Q. It had to be the case for that to occur that that
8 number was privatized only for one of the sites and not
9 for the entire CCA facility; is that right?

10 A. That's correct. If a number has been privatized
11 at the "all inmate" level, then no call to it would've
12 been recorded, regardless of the site level.

13 Q. And if the Federal Public Defender had requested
14 that that number be privatized - I don't know if this is
15 a question you can answer - would it have been fair for
16 them to assume that it would've been privatized for the
17 entire facility and not just certain sites?

18 A. I would think that would depend on what sort of
19 information was conveyed to them about the scope of the
20 privatization by CCA.

21 Q. If the Federal Public Defender believed that
22 having made a privatization request for a given number,
23 that it would be privatized for the entire facility and
24 not just certain sites, and then - as they did - they
25 received some calls from the facility where there was

1 the admonition and some calls from the facility where
2 there was no admonition, what-- what do you suppose
3 might've been a fair understanding then by the Federal
4 Public Defender, if you can answer that?

5 MR. CLYMER: I'm going to object as both
6 speculative and beyond this witness' knowledge.

7 THE COURT: I'll overrule. You can answer
8 it if you can.

9 THE WITNESS: If I, as a practicing
10 attorney, requested that my number be made private at a
11 facility and I received a call where the admonishment
12 played, I would assume that that call was being recorded
13 and I would contact the facility to obtain further
14 clarification and information. That's just how I would
15 have responded, and that's really the only way I can
16 answer the question.

17 BY SPECIAL MASTER COHEN:

18 Q. Okay. There are attorneys who have testified
19 that they believed they privatized their number,
20 believed that having done so, all numbers from that
21 facility would not be recorded, nonetheless, got phone
22 calls with the admonition. Do you think it would have
23 been an unfair conclusion by those attorneys that the
24 system just was sometimes-- sometimes played it and
25 sometimes didn't, the admonition, that it was

1 inconsistent?

2 MR. CLYMER: Objection, speculate-- calls
3 for speculation.

4 THE COURT: Overruled. You can answer it if
5 you can.

6 THE WITNESS: I would-- were I receiving
7 that call, and that's the only way I can answer this
8 question, I would've assumed that my number was not
9 private for that call and that there was some other
10 issues that would've required further investigation on
11 my part.

12 BY SPECIAL MASTER COHEN:

13 Q. Okay. That's fair. And, of course, you know
14 that there is the option of privatizing for less than
15 facility-wide sites?

16 A. Yes.

17 Q. You mentioned the admonishment. Are you aware
18 that sometimes the admonishment is different depending
19 on, for example, whether the call is prepaid or collect?

20 A. When I use the term "admonishment," I focus on
21 the portion of the admonishment that talks about the
22 call being recorded-- subject to recording and
23 monitored.

24 To my knowledge, that is consistent regardless of
25 the type of-- how the call is being paid for. But the

1 portions that-- of the preamble, to use Ms. Brannon's
2 term, may be different depending on whether or not it's
3 a free call or a prepaid call.

4 Q. Have you ever been in a facility and actually
5 used the Securus phones to call out to different
6 numbers?

7 A. No.

8 Q. I did and heard different admonishments,
9 depending on the number that I was calling. Can you
10 explain that to me?

11 A. I cannot.

12 Q. Just so that I understand different facilities.
13 If I were to privatize my own phone number at Sedgwick
14 County, that has nothing to do with whether my number is
15 privatized at CCA; is that correct?

16 A. That's correct. Each facility maintains its own
17 list of private numbers.

18 Q. And am I correct that Securus is no longer the
19 provider at CCA right now?

20 A. That's correct.

21 Q. Ms. Brannon asked you a question, I just want to
22 give you a concrete example. And this is completely
23 hypothetical, I'm not saying this happened, but I just
24 want to know if it could happen.

25 A. Understood.

1 Q. So Ken Lajiness is a fellow who had an account at
2 CCA at one time. Do you recall that name?

3 A. The name is familiar to me, yes.

4 Q. Okay. And so he had access to phone calls. If
5 he gave his security credentials to Joe Smith, Joe Smith
6 could use those credentials to do whatever it is Ken
7 Lajiness could do?

8 A. That's correct.

9 Q. And that would include, for example, if Ken
10 Lajiness could do it, monitoring phone calls or
11 downloading and-- downloading recordings of phone calls?

12 A. Under the scenario you've just described, that's
13 correct.

14 Q. If a phone number isn't marked private, it is
15 recorded; is that right?

16 A. If the facility is set to record by default, yes.

17 Q. And CCA was?

18 A. CCA at Leavenworth was, yes. I don't know about
19 other CCA facilities.

20 Q. If a phone number is marked private after some
21 time, all of the previously recorded numbers [sic] are
22 still in the system, could be downloaded and listened
23 to; is that correct?

24 A. Assuming the facility did not instruct Securus to
25 purge those calls, correct.

1 Q. Are you aware of CCA having done anything like
2 that, asking Securus to purge calls?

3 A. Not to my knowledge, no.

4 I'd like to clarify my previous answer. The
5 better answer is I do not know.

6 Q. Okay. Thank you.

7 As I think you know, having read my reports, I
8 found examples of instances where a call that was-- a
9 call to a number that had been marked private was,
10 nonetheless, recorded and accessed, not merely recorded
11 but also accessed. And I was speculating as to
12 different reasons that might've occurred. One was, as
13 we just talked about, it was recorded before the number
14 was privatized. That's one way that could've happened?

15 A. That is one possibility.

16 Q. Another is that the number had been marked
17 private for less than the entire facility, as we saw
18 with Ms. Brannon's example earlier; is that right?

19 A. That is another possibility, yes.

20 Q. Another possibility is that the private number
21 request that had gone to CCA was input incorrectly so
22 that even though the attorney had asked for calls to be
23 privatized, it simply didn't work because the number,
24 for example, was keyed in wrong. Is that possible?

25 A. That's possible. The system can only react to

1 data with which it is provided.

2 Q. Is another possibility that the list at CCA was
3 deleted somehow or modified?

4 A. When you say "the list"?

5 Q. I guess what I'm asking is whether the numbers
6 that had been privatized by CCA somehow got
7 unprivatized?

8 A. To my knowledge, that could only occur based on
9 an affirmative act within the platform, i.e., a
10 deprivatization event.

11 The call processing platform exists in two
12 physically independent but redundant data centers. And
13 I struggle to envision a scenario under which it would
14 be accidentally deleted due to a system error at both.
15 And the-- the number of people who would have the
16 ability to go into the system without leaving a trail
17 and do something like that, to my knowledge, is two.

18 Q. Okay. And I didn't mean to suggest something
19 that nefarious or that complicated. I just meant that a
20 number could be deprivatized?

21 A. Yes. And a person could go into the applicable
22 list and find the number and untick the private box and
23 save it.

24 Q. You mentioned an entity called Praeses?

25 A. Yes, sir.

1 Q. Can you explain to me what they are and how they
2 interacted with you and with CCA?

3 A. I've had no direct interactions with Praeses
4 other than contract negotiations with them prior to my
5 current position with Securus.

6 My understanding, though, is they-- they assist
7 with kind of the things that I've described. They will
8 help a customer of theirs prepare a bid for inmate
9 telephone service and then put that bid to market,
10 evaluate responses, negotiate the ensuing contract, and
11 then assist in the administration of the account on a
12 going-forward basis.

13 The examples of administration that I am most
14 familiar with would be in the contract space. The
15 customer would like some new products or functionality,
16 and Praeses will assist them in negotiating an amendment
17 to their contract with us.

18 I assume they can also provide more direct
19 hands-on help. I think we saw from one of the exhibits
20 we looked at earlier, Mr. Shidiskis at Praeses was
21 privatizing numbers, which tells me that-- I strongly
22 doubt he was doing that on his own. Right? So he was
23 apparently responding to a request from CCA for that
24 kind of assistance.

25 Q. Okay. So you're aware then that in this case,

1 Praeses was helping CCA do things like privatize numbers
2 on the Securus platform?

3 A. I've seen at least one example of that, yes.

4 Q. Do you know whether Praeses may have ever
5 deprivatized numbers on the Securus platform?

6 A. I do not know. I will say that the records we
7 have produced in the *Crane* litigation, the privatization
8 history reports showed no deprivatization transactions.

9 Q. Okay. You've described a very-- what I would
10 call a very sophisticated system with incredible
11 recording capacity and recording-- the ability for
12 people really around the country, if they have the right
13 credentials, I suppose anywhere in the world with a web
14 connection, to monitor and-- monitor calls live or to
15 obtain recordings of calls made between inmates and
16 whatever numbers they're calling; is that right?

17 A. Generally, yes.

18 Q. And some of the other services or capacities that
19 the Securus system have include, as I recall, an ability
20 for the system to notify, for example, a law enforcement
21 agent that an inmate is making a call so that it
22 actually can notify an agent that an inmate is making a
23 call. On that agent's cell phone, he can connect and
24 listen to that call live. Do I have that right?

25 A. Yes. That is a product functionality that's

1 referred to as covert alert.

2 Q. Did CCA have that?

3 A. No.

4 Q. Did Sedgwick County have that?

5 A. I do not know.

6 Q. Do you know if any of the other jails which are
7 using the Securus platform in Kansas or Missouri have
8 that?

9 A. I do not know.

10 Q. And am I correct that there's also within the
11 Securus platform a voice recognition capacity?

12 A. I would characterize it as a voice biometric
13 capacity that is used when-- and it's called
14 Investigator Pro.

15 When an inmate enrolls at a facility with an
16 IPro, as it's referred to, deployed, the system will
17 capture a voice print. And that is used to validate the
18 identity of the inmate whose account and/or PIN number
19 is being used to place the call.

20 As you might imagine, PIN theft and account theft
21 or coercion occurs from time to time. And so that is a
22 feature that would allow the-- the system to validate
23 that the person whose credentials are being used to
24 place the call is, in fact, the person who is placing
25 the call.

1 Q. So if, for example, one inmate is using another
2 inmate's PIN, you can still tell which Inmate A-- the
3 Securus system using that biometric voice pattern can
4 tell usually that the-- who the inmate really is, not
5 maybe the one whose PIN has been borrowed?

6 A. No, not to my knowledge. It's a pass/fail test.
7 So when the inmate is using the-- putting in the other--
8 Inmate A is putting in Inmate B's credentials and then
9 he has to say his name, if the voice print doesn't
10 match, the call will not continue.

11 Q. Understood.

12 During our tenure of talking together, you
13 actually got a promotion, as I recall?

14 A. I did.

15 Q. And that was partly because you were working so
16 hard and doing such a good job on this case; is that
17 right?

18 A. I would like to think so, yes.

19 Q. I'm happy for that. Thank you very much.

20 A. I appreciate it.

21 CROSS EXAMINATION

22 BY MR. CLYMER:

23 Q. Good morning, Mr. Martin. How are you?

24 A. I'm well, sir. How are you?

25 Q. Now, I haven't had the privilege like my

1 colleagues of speaking to you before, have I?

2 A. No, you have not.

3 Q. So if I mess up the terminology or get something
4 wrong, I'll just ask you to be a little patient with me.

5 A. Absolutely.

6 Q. Would it be-- is it accurate to say that the
7 services that your company provides to detention
8 facilities are essential for the operation of the
9 criminal justice system?

10 A. Without question.

11 Q. And on one hand, your company provides the
12 ability for inmates to speak with their attorneys while
13 they're incarcerated, which is necessary for them to be
14 effectively represented at trial; is that right?

15 A. I don't know that I would agree with the second
16 part of it, the conclusion part it. But on the first
17 part, yes.

18 Q. The attorney could go visit them as well.
19 Correct?

20 A. Yes.

21 Q. So the use of the phones may not be essential,
22 but it's certainly an important component in effective
23 representation. Correct?

24 A. I would agree, generally so, yes.

25 Q. And at the same time, people who are in detention

1 facilities often are in the facilities for good reason.

2 Correct?

3 A. Yes.

4 Q. And sometimes those people are dangerous to the
5 community?

6 A. Yes.

7 MS. BRANNON: Objection, speculative and I
8 think outside his knowledge.

9 THE COURT: Overruled. You can answer if
10 you can.

11 BY MR. CLYMER:

12 Q. And there are known instances where people in
13 detention facilities try to have witnesses killed; is
14 that correct?

15 A. I'm anecdotally familiar with those, yes.

16 Q. And the covert alert system you described under
17 the right circumstance might save a witness' life.
18 Correct?

19 A. Yes.

20 Q. So the trick is to balance the inmates' interests
21 in having effective representation with the need for
22 effective law enforcement. Right?

23 A. Yes. Without being glib, life is all about
24 tradeoffs, and we have to make the right compromises,
25 yes.

1 Q. And in order to give inmates the ability to speak
2 to their attorneys privately, Securus has a
3 privatization function in its software. Correct?

4 A. Yes.

5 Q. And based on everything you have learned during
6 the course of this litigation and the other litigation
7 you've been involved in, there's nothing to suggest that
8 the Securus privatization function is faulty in any way,
9 is there?

10 A. Based on all the data that was produced by us in
11 the *Crane* case, I have found no instance where a call
12 that was set to private for the inmate that was placing
13 the call was recorded.

14 Q. But Securus' platform can only be as good as the
15 data that's given to it. Correct?

16 A. Absolutely.

17 Q. And so if the wrong phone number is submitted as
18 part of a privatization request, only that wrong phone
19 number will be privatized. Correct?

20 A. Yes. The system only knows the ten digits, not
21 whether it's right or wrong.

22 Q. And if the inmate-- if the subset of the inmate
23 population designated in a privatization request is
24 listed a certain way, that's what the platform does.
25 Correct?

1 A. Yes. It responds to the data with which it is
2 provided.

3 Q. And if someone forgets to forward a privatization
4 request to Securus, that doesn't go into the Securus
5 platform either, does it?

6 A. Generally speaking, we do not process
7 privatization requests. So if someone failed to
8 internally forward it to the appropriate person in that
9 facility, that would cause a number not to be
10 privatized. But by and large, privatization
11 transactions are handled by our facility customers.

12 Q. If a phone-- if an attorney phone number is not
13 privatized for any particular reason, when the inmate
14 makes the call there is a warning on the call; is that
15 correct?

16 A. There is a warning that the call is subject to
17 recording and monitoring, yes.

18 Q. And if it's not-- if the call is not privatized,
19 that warning is on every such call used on the-- made on
20 the Securus platform. Correct?

21 A. Yes.

22 Q. So that warning that the call is subject to
23 recording and monitoring gets heard by the caller every
24 time he makes that call. Correct?

25 A. To my knowledge, yes.

1 Q. And it's heard by the recipient every time the
2 recipient receives that call. Correct?

3 A. To my knowledge, yes.

4 Q. So every time this happens, both the caller and
5 the recipient is given notice that that particular call,
6 that specific call is subject to recording and
7 monitoring. Correct?

8 A. Yes.

9 Q. And that alone puts someone on notice that
10 perhaps a privatization request was ineffective; is that
11 right?

12 A. I can only speak to what my personal reaction
13 would be to hearing that admonishment after submitting a
14 privatization request, but that is absolutely how I
15 would take it.

16 Q. You would take it as a suggestion-- or an
17 indication that the privatization request didn't work.
18 Correct?

19 A. Yes.

20 Q. Now, let's suppose you had two sets of inmate
21 populations calling you. And for one set of inmate
22 calls you heard that warning, and for another set you
23 didn't hear that warning. And that happened after you
24 submitted a privatization request. In other words, that
25 difference between the two sets.

1 A. Understood.

2 Q. Would that give you additional notice that
3 something may have been wrong with that privatization
4 request?

5 A. It would tell me that, for whatever reason, the
6 request had not been fulfilled for at least one of my
7 inmate clients. And me personally, it would cause me to
8 follow up with the facility and, of course, not to
9 discuss anything substantive with my client on the call
10 at which I heard the admonishment. And, frankly, I
11 probably, until I received additional assurances from
12 the facility, wouldn't have substantive discussions with
13 my clients even if I did not hear the admonishment.

14 MR. CLYMER: I'll need a moment, Your Honor,
15 to find an exhibit. Could I have Exhibit 564 put up,
16 please? If you could flip down to the subpoena return,
17 I would appreciate it. Go up just to the page where
18 Line 23 and 24 are located. That's good. Thank you
19 very much.

20 BY MR. CLYMER:

21 Q. Can you see that screen, Mr. Martin?

22 A. If we could zoom in on rows 23 and 24, I would
23 appreciate it.

24 MR. CLYMER: I think he wants you to zoom in
25 if you could.

1 THE WITNESS: Thank you. I can see it now.

2 BY MR. CLYMER:

3 Q. Do you see those rows?

4 A. I do.

5 Q. And those are the rows, 23, 24, were the rows
6 where the same phone number at the Public Defender's
7 Office was privatized as to one-- excuse me, that may
8 not be the right one.

9 MR. CLYMER: Could I have a moment, Your
10 Honor?

11 THE COURT: Yes.

12 MR. CLYMER: I'm sorry, could you go to
13 Page 6 of that exhibit? Could you-- is that
14 Exhibit 564?

15 MR. BELL: Yes.

16 MR. CLYMER: Could you go to the one at the
17 bottom that says Page 1 of 199, please? Thank you.
18 Now, could you go to Lines 23 and 24 of that page?

19 THE WITNESS: That's-- that zoom level was
20 sufficient for me to be able to read it.

21 BY MR. CLYMER:

22 Q. That's the exhibit that Ms. Brannon-- that's the
23 page of the exhibit Ms. Brannon showed you before; is
24 that correct?

25 A. It is.

1 Q. Okay. And does that line indicate that, in fact,
2 in this case or in the call related to this case, the
3 Federal Public Defender's Office received both the
4 preamble with the warning on a non-privatized call and
5 the preamble without the monitoring and recording
6 warning on an unprivatized call?

7 A. Yes.

8 Q. To the same telephone number?

9 A. Yes.

10 Q. So over time, there may have been other calls to
11 the same number, both privatized and non-privatized
12 calls. Correct?

13 A. That's possible.

14 Q. Okay. Now, if a user of your service-- well,
15 strike that.

16 In addition to the warning that you talked about
17 about recording and monitoring, there's also a series of
18 choices a recipient has to make about whether to accept
19 the call or reject the call. Correct?

20 A. I don't know that I would characterize it as a
21 series of choices, but they would need to decide whether
22 or not they were going to accept or not accept the call.

23 Q. And they-- so they actually have to press a
24 button and do something affirmative. Correct?

25 A. Yes.

1 Q. So that suggests that every time that warning is
2 given, a human being has to hear it before the call can
3 be accepted; is that right?

4 A. I would assume so, yes.

5 Q. Because somebody has to press a button to
6 continue the process?

7 A. Yes.

8 Q. Now, if a user requests a call and the call has
9 that warning on it, is there anything on that call that
10 would notify the user who's requested the call that
11 there had been a privatization request with respect to
12 that number?

13 A. By user, you're referring to user at CCA?

14 Q. Yes.

15 A. And they're-- they're listening to the recording
16 of the call?

17 Q. Let me give you a better example.

18 A. Please.

19 Q. If an Assistant United States Attorney asks CCA
20 to get telephone calls made on a certain inmate's PIN
21 number--

22 A. Okay.

23 Q. -- and CCA makes the request and obtains those
24 calls and gives them to the Assistant U.S. Attorney, is
25 there anything on those calls that the Assistant U.S.

1 Attorney receives that tells the Assistant U.S. Attorney
2 that there's been a privatization request as to that
3 number?

4 A. No.

5 Q. Is there anything in the call detail records that
6 accompanies that request that tells the Assistant U.S.
7 Attorney that there's been an unsuccessful privatization
8 request as to that number?

9 A. No.

10 Q. So the only person who would have notice of the
11 failure of a privatization request would be the person
12 who made the request and then hears calls later with the
13 warning on it or the person at CCA who made the mistake;
14 is that correct?

15 A. Yes.

16 Q. And if the attorney told the inmate, I've had
17 your calls to me privatized, and the inmate subsequently
18 heard the warning, the inmate would have notice as well.
19 Correct?

20 A. Potentially, yes.

21 Q. If the warning played on the calls. Correct?

22 A. It's hard for me to answer that question
23 without-- without assessing the relative sophistication
24 of the inmates.

25 Q. But if the privatization request failed, the

1 inmate would still hear that warning. Correct?

2 A. Yes.

3 Q. Every single call. Correct?

4 A. Yes. And were I detained or incarcerated and
5 calling my attorney and had previously submitted a
6 privatization request and not heard the admonishment for
7 a period of time and then began to hear the
8 admonishment, my personal reaction would be the same as
9 if I were in the attorney's shoes. I would be
10 concerned, and I would assume that the call was-- that
11 the privatization was unsuccessful or had subsequently
12 failed.

13 Q. I'm going to show you what's been marked as
14 Government Exhibit 38. And I'll represent to you that
15 this is the Special Master's report regarding other
16 issues related to recordings at CCA-Leavenworth, Docket
17 No. 214 in this case.

18 A. Understood.

19 MR. CLYMER: Your Honor, I move 214 into
20 evidence.

21 THE COURT: Exhibit 38 admitted.

22 MS. BRANNON: It's already in the record.

23 BY MR. CLYMER:

24 Q. If you look at the page I directed you to there,
25 could you tell us what page I pulled up?

1 A. Page 19.

2 Q. And on Page 19, is there a description by the
3 Special Master of the admonishment that is on the
4 recording at CCA-Leavenworth from Securus?

5 A. There is.

6 Q. And can you read the line that gives the inmate
7 and the attorney notice that the call is being monitored
8 and recorded?

9 A. "This call is subject to recording and
10 monitoring."

11 Q. And is that your understanding of the recording
12 that Securus puts on all unprivatized calls made by
13 inmates?

14 A. The admonishment predates my time. And so-- and
15 I, frankly, just haven't done the investigation to
16 understand quite how-- how frequently it is used, but
17 let me-- sorry, my answer is getting confused.

18 An admonishment plays for all non-private calls.
19 It is either this one, which I would characterize as the
20 standard or routine admonishment, or in the case of
21 certain facilities, it can be a custom admonishment
22 that, for example, provides guidance about contacting
23 the facility to request that a number be privatized.

24 Q. Do you have any reason to believe that the
25 Special Master's characterization of the admonishment in

1 that exhibit is incorrect?

2 A. I believe the Special Master has accurately
3 quoted the admonishment that played for calls from
4 CCA-Leavenworth for non-private calls.

5 MR. CLYMER: May I have Exhibit 568 put on
6 the screen? And if you could zoom in on-- if you go
7 back down to the page you were on, thank you, and zoom
8 in on that. Actually zoom in on the last four columns.
9 Thank you. Actually-- right there is good, where you
10 had it is fine. Thank you.

11 BY MR. CLYMER:

12 Q. I notice in the last column here--

13 MR. CLYMER: Could you scroll up so we see
14 the heading on that column? Thank you, counsel.

15 BY MR. CLYMER:

16 Q. The last column here says "passive status." And
17 sometimes there's an "N" in this column and sometimes
18 there's a "Y." Can you explain to us what that means?

19 A. I believe this is associated with the passive
20 acceptance option that's contained within the four lists
21 that we discussed earlier. If it is an "N" for no, the
22 call requires positive acceptance. If it is a yes, I
23 assume - but do not know for certain - that that means
24 the call can be completed without positive acceptance.

25 Q. That means nobody would have to push a button on

1 the other end. Correct?

2 A. That's correct.

3 Q. If that was the case and if these telephone
4 numbers that are listed here to the Public Defender's
5 Office on this Exhibit 568 were in passive status, does
6 that mean that a call on the Securus system that went to
7 voicemail would be listed as a completed call?

8 A. Potentially.

9 Q. Okay. And can you tell us for these rows - where
10 the last column has a "Y" in it as in passive status -
11 the dates on which there was a change to the system, and
12 as of the date of that change, the system-- or that line
13 was in passive status?

14 A. The data exists within the system. There is no
15 easy way to get to it. So as I sit here today, no, I
16 cannot.

17 Q. If you look at the privatization data date--

18 A. Yes.

19 Q. -- that simply shows the date that the change to
20 privatization was made. Correct?

21 A. Yes.

22 Q. So as a result of that date, would the system
23 have been in passive status or can we just not tell when
24 it was moved to passive status?

25 A. I don't know what conclusion we can draw.

1 Q. Thank you. Now, the call detail records you
2 described before don't actually show who the inmate is
3 who makes the call, does it?

4 A. It shows the name of the inmate whose account
5 number and PIN number were used to place the call.

6 Q. But sometimes inmates will let other inmates use
7 their PIN number. Correct?

8 A. Anecdotally I'm aware of that occurring, yes.

9 Q. And that's one of the reasons why you have the
10 biometric function that Mr. Cohen asked about. Correct?

11 A. Yes.

12 Q. So for any particular call detail record, you
13 cannot tell from that-- any particular call who actually
14 initiated the call from the detention facility?

15 A. No, we can only tell whose credentials were used.

16 Q. And the call detail records show the telephone
17 number that the inmate called. Correct?

18 A. They do.

19 Q. It doesn't show who answered the phone, does it?

20 A. They do not.

21 Q. And it doesn't show who was on the line during
22 the call, does it?

23 A. It does not.

24 Q. And it doesn't show for-- for numbers that are in
25 passive status whether the call just went straight to

1 voicemail, does it?

2 A. No.

3 Q. Only the content of the call, the recording
4 itself would provide that kind of information. Correct?

5 A. Yes.

6 MR. CLYMER: Could we have Exhibit 563 up,
7 please? If you could scroll down to the subpoena. If
8 you could expand then the-- the data you have there.
9 Thank you.

10 BY MR. CLYMER:

11 Q. I'd like to now direct your attention to
12 Exhibit 563, which you were shown before. And of the
13 five calls reflected on the call detail record, one is
14 incomplete. Do you see that?

15 A. I do.

16 Q. And the-- you testified before that a call would
17 be incomplete if it never connected. Correct?

18 A. Correct.

19 Q. Would the recording still play on an incomplete
20 call?

21 A. Would the recording still play? Which recording?

22 Q. The recording that has the warning in it and the
23 instructions about buttons to press.

24 A. It would depend on how long the called party
25 remained on the line after first picking up.

1 Q. If you could go over a couple columns to the
2 start and end time for that call, you'll see-- you see,
3 do you not, that the start time of that call appears to
4 have been 1:14 and 41 seconds on November 27, 2014.
5 Correct?

6 A. I see that, yes.

7 Q. And the end time is 1:16:17 on the same date.
8 Correct?

9 A. I see that as well.

10 Q. So that would suggest that that call lasted
11 roughly a minute-and-a-half. Correct?

12 A. That's a difficult question for me to answer
13 because the-- I'm not-- I don't know when the clock
14 starts ticking, in other words when the start time
15 begins. If it begins when the inmate first takes the
16 handset out of the cradle and begins the dialing
17 process, that could account for some portion of that
18 time.

19 Q. And the earlier the clock starts running, the
20 longer the call is going to be in terms of the-- based
21 on the call detail records, even if no one is talking to
22 each other. Correct?

23 A. Yeah, that's correct.

24 Q. So a call that never connects here seems to have
25 lasted roughly a minute-and-a-half. Correct?

1 A. Well, it depends what you mean by "call." If
2 we're describing that as the beginning-- at the moment
3 the inmate takes the handset off the hook, then that
4 answer would be correct.

5 Q. This attempted call seemed to be recorded as
6 lasting roughly a minute-and-a-half in the Securus call
7 detail report. Correct?

8 A. Yes, subject to the caveat that I don't know the
9 actual event that begins the clock ticking.

10 THE COURT: Mr. Clymer, if you're going to
11 be a few more minutes, let's take a break.

12 MR. CLYMER: Thank you, Your Honor. That
13 would be helpful.

14 THE COURT: All right. Let's take a break
15 for 15 minutes.

16 (Recess).

17 THE COURT: All right. You can be seated.

18 MR. CLYMER: May I proceed, Your Honor?

19 THE COURT: Yes.

20 BY MR. CLYMER:

21 Q. Mr. Martin, during the time your company had the
22 contract with CCA-Leavenworth and an attorney wanted to
23 submit a privatization request, did the documentation
24 for that request go to CCA-Leavenworth or did it go to
25 Securus?

1 A. It did not go to Securus.

2 MR. CLYMER: Could I get that Exhibit 568 up
3 again?

4 BY MR. CLYMER:

5 Q. I'm going to show you what's been marked as
6 Exhibit 568.

7 MR. CLYMER: Bonnie, can we get the screen
8 on?

9 COURTROOM DEPUTY: Before I was asked not to
10 have them on because they're sealed.

11 MR. CLYMER: Oh, is this one sealed? I'm
12 sorry, thank you.

13 THE COURT: We do have a problem. The
14 Special Master--

15 COURTROOM DEPUTY: We have a monitor.

16 MS. VANBEBBER: We have it.

17 THE COURT: Now, but you didn't have it
18 before. So you haven't seen any of these documents that
19 have been admitted under seal?

20 MS. VANBEBBER: No, Your Honor, we have not
21 until the paper was delivered to us about half an hour
22 ago.

23 THE COURT: All right. I'm going to give
24 you leeway if you want to, Mr. Cohen, examine about the
25 documents since you weren't able to see them up until

1 now. But go ahead and proceed.

2 So you've got it on your monitor, I have it.
3 You now have it on your monitor. FPD have it on your
4 monitor. All right. Mr. Slinkard?

5 MR. SLINKARD: Yes.

6 THE COURT: Okay.

7 MR. CLYMER: Thank you.

8 COURTROOM DEPUTY: So don't publish it?

9 THE COURT: Don't publish it. Mr.
10 Guastello, are you able to see it?

11 MR. GUASTELLO: I am, Your Honor.

12 THE COURT: Okay. Good.

13 BY MR. CLYMER:

14 Q. Exhibit 568 is a document you already testified
15 about that shows in your system when privatization
16 requests were made to the system; is that right?

17 A. It shows privatization transactions entered into
18 the system subject to the criteria-- the subpoena, which
19 this document was produced in response to.

20 Q. And that would be Securus' record of the
21 privatization request; is that right?

22 A. Of the privatization transactions, not
23 necessarily the request, yes.

24 Q. The transaction, thank you.

25 A. Yes.

1 Q. If somebody deprivatized or unprivatized a
2 telephone number in the Securus system, would your
3 system also maintain a record of that transaction?

4 A. It would.

5 Q. And if you were served a subpoena for that
6 information, would you comply with the subpoena?

7 A. Subject to a potential burden objection, which we
8 can discuss now or later, I mean, it's-- the issue is
9 the data exists within the system, but there is not a
10 reporting function-- standard reporting functionality
11 that allows it to be easily generated. So it will take
12 some time and person hours to generate that report.

13 Q. You're not aware, as you sit here right now, of
14 any deprivatization transactions, are you?

15 A. No. We produced the privatization-- master
16 privatization log in the *Crane* litigation, which was
17 reflected-- was based on transactions associated with
18 the numbers on Special Master Cohen's known attorney
19 telephone number list. And of those transactions, there
20 were no deprivatization events.

21 MR. CLYMER: Nothing further, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. BRANNON:

24 Q. Mr. Martin, does Securus have anything to do with
25 publishing privatization protocol?

1 A. No.

2 Q. Do you require your customers or facilities to
3 publish privatization protocol?

4 A. Not to my knowledge.

5 Q. Do you know whether CCA ever informed any
6 attorney that there was a difference in privatizing at
7 site levels?

8 A. I do not know.

9 Q. If we could look at Exhibit 550. You looked at
10 this earlier, it was an e-mail to Mr. Bigelow. If you
11 could go down one I think. That. Right.

12 These are instructions from Michael Kenyon to Mr.
13 Bigelow. And the question was how to privatize. Is
14 there anything in those instructions that talks about
15 different site levels?

16 A. Not explicitly.

17 Q. Is there anything implicitly that talks about
18 site levels?

19 A. There is no specific instruction regarding
20 selecting a site level. So were I interpreting this as
21 the recipient, I would take the path of least resistance
22 in terms of steps needed to complete the transaction,
23 which would result in it being privatized. At the
24 facility level, that is the "all inmate."

25 Q. Okay. Let's break that down a little bit.

1 There's nothing in this e-mail that would tell Mr.
2 Bigelow what the differences were in the site levels.
3 Correct?

4 A. That's correct.

5 Q. And earlier you pointed out that on the drop-down
6 option-- if you just left that alone and didn't click
7 anything, it would privatize for the entire facility?

8 A. That is correct.

9 Q. And in order to choose one of the smaller sites,
10 you have to actually go in and choose that rather than
11 just passively-- or just pass it by?

12 A. That's correct. Selection of a site level
13 privatization transaction requires additional steps on
14 the part of the end user.

15 Q. Is there anything in these instructions to Mr.
16 Bigelow that would tell him that if he just didn't
17 choose anything on the site level, that it would
18 privatize calls to all inmates?

19 A. No. This e-mail is silent on the distinction
20 between facility and site level privatization events.

21 Q. You talked on cross examination about why a
22 number that had been requested to be privatized would
23 still be recorded. And if we could look at Exhibit 548.
24 And I handed you this exhibit over the break to read
25 through. Did you get a chance to do that?

1 A. I did.

2 Q. Okay. And if we look at the last page of this,
3 just going up through the e-mail chain. The first
4 e-mail I think on the next page-- I'm sorry, Branden,
5 one more.

6 This e-mail chain is about Mr. Bigelow having
7 entered numbers-- entered the wrong numbers; is that
8 right?

9 A. Yes.

10 Q. And is he asking Mr. Kenyon to fix that for him?

11 A. In Mr. Bigelow's e-mail dated September 12th,
12 2016, at 11:52 a.m., it appears that he is asking Mr.
13 Michael Kenyon how-- quoting-- quote, "Now how do I
14 delete these-- those incorrect numbers?"

15 Q. And this is in the context of privatization of
16 those numbers?

17 A. Yes.

18 Q. All right. On cross examination you talked
19 somewhat about what your reaction would be to hearing
20 the admonition. Now, let me start by asking you, Mr.
21 Martin, have you practiced criminal defense work before?

22 A. No.

23 Q. Have you ever represented someone who is locked
24 up in a facility?

25 A. I have not.

1 Q. And would it be fair to say that from your
2 position and experience over the last couple of years,
3 you would be particularly sensitive to what the preamble
4 or-- what was the word you used, admonition--

5 A. Admonition.

6 Q. -- what that says?

7 A. Yes. That is correct. Although my initial
8 reaction as an individual, as the facts of this case
9 became known to me, you know, that hasn't changed.

10 Q. To follow up on some of the hypotheticals that
11 the prosecutor posed to you. If you were a defense
12 attorney and you had asked for your number to be
13 privatized and you had received confirmation from the
14 facility that your number had been privatized, would it
15 be reasonable to expect that call is not recorded, even
16 if there was an admonition that was played?

17 A. From my perspective, if I heard the admonition, I
18 would assume that something was not working as I had
19 been told it was.

20 Q. What if they followed up and asked again, is my
21 number privatized, and they received confirmation again
22 that it was privatized. How many times would that
23 attorney need to go back to the facility?

24 A. I can't answer that question.

25 Q. Okay. If he had received-- if the attorney had

1 received confirmation more than once that his number had
2 been privatized, would it be reasonable to believe that
3 the call was not recorded, despite the preamble?

4 A. From my perspective, it would depend on my
5 relative interpretation of the credibility of the person
6 making those representations.

7 Q. Would it depend at all on what the admonition
8 actually said?

9 A. It might.

10 Q. The admonition that Securus uses does not say
11 that this call will be recorded. Right?

12 A. It does not contain those exact words. That's
13 correct.

14 Q. It says that the call is subject to recording.
15 Right?

16 A. Correct.

17 Q. And you would agree that that's a lesser degree
18 of assurance-- of information about whether a call would
19 be recorded or not, that it's possible?

20 A. Yes.

21 Q. But subject to recording, it's possible that it
22 would be recorded. So hearing that admonition, if an
23 attorney had been assured that his calls were not
24 recorded, would it be reasonable to assume that they
25 were not recorded, despite the preamble?

1 A. I can only answer again from my perspective
2 putting myself in those shoes, and my first instinct
3 would be to protect my presumably less-sophisticated
4 detainee client and refrain from discussing anything
5 substantive on the call until I could reach a level of
6 assurance that the call was not being recorded.

7 Q. Do you know what the preamble says in Spanish?

8 A. I do not.

9 Q. So if the Spanish version said the call may be
10 recorded, you would agree that that's an even lesser
11 degree of information about whether a call would be
12 recorded?

13 A. I would agree that it creates at least a higher
14 amount of uncertainty.

15 Q. If-- and you talked about the
16 lesser-sophisticated inmate. If the
17 lesser-sophisticated inmate had been told by his
18 attorney that his calls to the attorney would not be
19 recorded, would it be reasonable for that
20 less-sophisticated inmate to rely on what his attorney
21 said, despite the preamble?

22 A. Theoretically, yes.

23 Q. And would that be especially true if he was-- the
24 preamble said that the call may be recorded?

25 A. That would be a factor.

1 Q. And still true if it said subject to recording?

2 A. Yes.

3 Q. If it said your call will be recorded, that might
4 be a direct contradiction?

5 A. I agree that the statement "this call will be
6 recorded" is more definitive than "this call may be" or
7 "this call is subject to." But all I can answer that
8 question with is how I believe I would react in those
9 circumstances, which I have never been in.

10 Q. Do you know what information the inmate is given
11 about recorded calls in orientation when they arrive at
12 the facility?

13 A. I believe I was present in the *Crane* case at a
14 deposition of CCA's corporate representatives where the
15 issue was discussed, but I do not recall with
16 specificity the information responsive to your question.

17 Q. Do you remember-- do you know what information
18 the inmate may be given if they received a handbook?

19 A. I do not.

20 Q. Do you know if the inmate receives any
21 information at all about what the preamble means in
22 context of calling their attorney?

23 A. I do not.

24 Q. If we could look at-- well, yeah, Exhibit 563,
25 please. The prosecutor asked you some questions about a

1 call detail report. If we'd look at this particular
2 one.

3 Going back and following up on hypotheticals. If
4 an Assistant U.S. Attorney knew a defense attorney's
5 phone number, would it be possible to look at a call
6 detail report and determine whether a call was to that
7 number?

8 A. Yes.

9 Q. And you could do that without actually listening
10 to the call?

11 A. Yes.

12 Q. All right. And if we look at Exhibit 573, you
13 were asked about the length of certain calls. These are
14 all calls to the 1000 number. Correct?

15 A. That's what's reflected in the document, yes.

16 MS. BRANNON: And, Your Honor, for the
17 record, the earlier testimony was that this was Mr.
18 Cox's phone number, Ms. Wood's attorney at the time.

19 THE COURT: The record will so reflect.

20 BY MS. BRANNON:

21 Q. Some of these calls are quite short, would you
22 agree?

23 A. It appears that way, yes.

24 Q. But some of them, like the fourth row down, 9:52
25 to 10:03?

1 A. I see that, yes.

2 Q. And that's minutes, not seconds. Correct?

3 A. Agreed.

4 Q. Is there a time limit on these phone calls? Do
5 they cut off at 15 minutes?

6 A. Facilities generally have a time limit on calls.
7 And 15 minutes is, in my experience, the most commonly
8 applied time limit, but I do not know specifically what
9 was in place at Leavenworth.

10 Q. Does passive status-- whether it's set at passive
11 status, does that have anything to do with whether a
12 call is recorded or not?

13 A. It does not.

14 Q. Does it have anything to do with whether a
15 preamble plays?

16 A. To my knowledge it does not.

17 MS. BRANNON: Nothing further. Thank you.

18 THE COURT: Go ahead.

19 SPECIAL MASTER COHEN: Thank you, Judge.

20 RECROSS EXAMINATION

21 BY SPECIAL MASTER COHEN:

22 Q. There's one thing that just keeps confusing me I
23 don't understand. To make a private number less
24 private, that is to make it private for a site only
25 instead of the entire facility, takes at least two

1 additional clicks by whoever it is that is privatizing
2 the number, as I understand it; is that right?

3 A. That's consistent with my understanding, yes.

4 Q. And you say that you haven't practiced criminal
5 law, but it's clear that you understand that an attorney
6 who wants to protect communications with his inmate
7 client probably wants to protect communications with all
8 of his inmate clients in the facility, not just one.
9 Right?

10 A. I would agree.

11 Q. So here's the thing that just confounds me. Why
12 would a number ever be set by anybody for less than
13 fully private for the entire facility? Why would that
14 ever occur?

15 A. I can only answer as to Securus. And were such a
16 request made to us by a facility customer, by
17 Leavenworth, we would comply with it because it's
18 their-- that's their list to control. Why CCA would do
19 it, I do not know.

20 Q. Right. So your-- as the supplier of the system
21 to CCA, if they asked for that capacity, you would make
22 it available because you can. Right?

23 A. What do you mean by "that capacity"?

24 Q. The capacity to make a number private for less
25 than the entire facility. You would provide that

1 capacity if they wanted it?

2 A. Yes. And the capacity exists in this instance
3 not, to my knowledge, because they requested it, but
4 because it was a necessary by-product of the way they
5 requested that the inmates be segregated within the
6 platform by agency affiliation.

7 Q. Is there any reason that you can think of that
8 defense counsel, criminal defense counsel, would know or
9 learn that their number is being privatized for less
10 than the entire facility?

11 A. Only if they were informed by the facility.

12 Q. It's not something they would expect, do you
13 think?

14 A. If I had requested that my number be made private
15 at CCA-Leavenworth and I was told that it was done, I
16 would assume that it was done universally and not in
17 relation to a specific inmate subpopulation.

18 The only way I would think something otherwise
19 would be if CCA had a policy of allowing numbers to be
20 privatized only on an inmate-client-by-inmate-client
21 basis.

22 Q. And if defense counsel makes a privatization
23 request and understands or believes that the number is
24 made private for the entire facility, and then still
25 hears a recording that says it may be subject to

1 recording-- excuse me, still hears an admonition that it
2 may be subject to recording, that's not inconsistent
3 entirely. It might give them a heads-up that something
4 is off, but it's not inconsistent. Would you agree?

5 A. I don't know that I would agree. All I can do in
6 answering these questions is speak to how I personally
7 as an individual attorney would've responded to hearing
8 that admonishment. And my reaction would be the same as
9 that which I previously testified to, I would assume
10 that there was a problem with the privatization process,
11 and I would not discuss anything substantive with my
12 inmate client on that call.

13 Q. Fair enough. Mr. Clymer asked you about defense
14 counsel perhaps sometimes from some inmates getting
15 calls with the admonition and sometimes getting calls
16 from inmates without the admonition, and that that could
17 conceivably give them an understanding that there are
18 different populations in the facility.

19 A. I recall those questions, although I didn't make
20 that mental jump to the conclusion that you just
21 described.

22 Q. Okay. That was probably in my own head. But if
23 defense counsel could make that inference that there is
24 a reason that some inmates' calls are privatized to the
25 same number and some aren't, if defense counsel could

1 get wind of that, United States Attorneys could get wind
2 of that too, because they're actually getting the calls;
3 is that right?

4 A. I can't answer that question.

5 Q. You talked about sophistication. I assume that
6 you meant that most inmates are probably not really very
7 sophisticated with regard to their own Sixth Amendment
8 rights. Do you recall that?

9 A. I-- I recall my characterization or reference to
10 the relative sophistication between an inmate client and
11 his attorney, but I don't know that I would extend it
12 that far to knowledge of Sixth Amendment rights.

13 Q. Okay. Is it fair to say that an attorney is
14 generally more sophisticated than an inmate client about
15 legal matters and specifically Sixth Amendment rights
16 and attorney-client communications?

17 A. I would assume so, yes.

18 Q. And that would include United States Attorneys?

19 A. Yes.

20 Q. You understand that the Securus platform is-- the
21 Securus platform allows inmates to call their attorneys,
22 that's one of the things it does?

23 A. Correct.

24 Q. As well as their friends and loved ones?

25 A. That's right.

1 Q. The fact that it allows them to communicate with
2 their attorneys has implications, you understand, for
3 the attorney-client privilege and the Sixth Amendment;
4 is that right?

5 A. Generally, yes.

6 Q. Those are constitutional rights. Correct?
7 You're an attorney, you know that?

8 A. I do know that.

9 Q. So it's pretty important what we're talking
10 about. We're talking about an inmate's Sixth Amendment
11 rights under the Constitution and his rights to have
12 attorney-client communications kept private. Would you
13 agree that that's very important?

14 A. I agree that the issues at play in this
15 proceeding are very important. Yes.

16 Q. And so making sure the system works correctly is
17 also important?

18 A. In this capacity, yes.

19 SPECIAL MASTER COHEN: Just a moment,
20 please. Thank you, Mr. Martin.

21 THE WITNESS: Thank you.

22 RE CROSS EXAMINATION

23 BY MR. CLYMER:

24 Q. Mr. Martin, I want to ask you about something you
25 just said to Mr. Cohen about the different sites, that

1 you could designate inmates based on sites.

2 Does the division of inmates into different sites
3 have some function in the Securus platform other than to
4 designate privatization requests to-- privatization
5 transactions, excuse me?

6 A. Yes, it does.

7 Q. Can you explain that, please?

8 A. Well, in one sense, the segregation of inmates in
9 the same physical facility into separate sites has
10 implications on reporting. For example, it would allow
11 CCA to segregate out the number of calls placed by
12 inmates from marshal to county to DOC. It would also
13 allow them to-- it has financial reporting functions as
14 well, because commissions are paid on calls. And it's
15 my anecdotal understanding that in some instances CCA's
16 obligations with respect to its agency clients vary from
17 contract to contract and so-- in financial terms. So
18 that may be an aspect as well.

19 In terms of the call platform itself, the primary
20 differences that I'm aware of, or implications, are
21 those associated with the settings that are contained
22 within the global lists that are applicable to each of
23 the three sites and as well as the facility. There may
24 be other implications within the platform of which I am
25 unaware.

1 Q. So the fact that the inmate pool at
2 CCA-Leavenworth is divided into three separate groups of
3 people, each subject to a different contract with a
4 different entity, has implications for the way the
5 Securus platform works; is that right?

6 A. I would say that their directive to us to
7 segregate the three populations had implications on how
8 the platform works, yes.

9 Q. Once you do that within the Securus platform,
10 does that drop-down menu that counsel asked you about
11 automatically populate with all three of the client
12 populations?

13 A. I do not know.

14 Q. So it's possible that nobody ever set that up for
15 that drop-down menu on that particular page where you
16 privatize a call, that just may happen automatically
17 because of the software code; is that right?

18 A. I'm speculating, but yes, that is certainly
19 possible.

20 Q. Mr. Cohen asked you about who would have notice
21 about there being the admonition on some calls and not
22 others. Do you remember those questions?

23 A. I do.

24 Q. If a call is privatized, it has no admonition.
25 Correct?

1 A. Correct.

2 Q. If a call is not privatized, it does have the
3 admonition. Correct?

4 A. It does.

5 Q. Privatized calls that don't have the admonition
6 never get accessed and sent out, though, do they?

7 A. Those calls are not recorded, so there is nothing
8 to be accessed or sent out.

9 Q. So a federal prosecutor getting a recording would
10 never hear a call that lacks the admonition; is that
11 correct?

12 A. That's correct.

13 Q. Only the person who's actually having the live
14 conversation with the inmate when the number has been
15 privatized will hear the warning with no admonition.
16 Correct?

17 A. Yes. Those would be the only people who would
18 hear the preamble without the admonition.

19 MR. CLYMER: Nothing further.

20 THE COURT: All right. Anything more? Oh,
21 go ahead.

22 REDIRECT EXAMINATION

23 BY MS. BRANNON:

24 Q. Mr. Martin, how much is Securus worth as a
25 company?

1 A. I do not know the answer to that question.

2 Q. Millions?

3 A. I do know that we recently changed our equity
4 owners, and the valuation of the company in connection
5 with that transaction was north of a billion dollars,
6 but I don't know by how much.

7 Q. Your company, Securus, is being sued in the
8 *Crane-Johnson* litigation over in the Western District of
9 Missouri; is that right?

10 A. That's correct.

11 Q. And you're being sued by defense lawyers.
12 Correct?

13 A. Yes. It is a class consisting of defense
14 lawyers.

15 Q. Criminal defense lawyers who had clients at CCA?

16 A. Correct.

17 Q. And one of the allegations in that suit against
18 your company is that Securus recorded attorney-client
19 calls?

20 A. Correct.

21 Q. That Securus recorded attorney-client calls after
22 requests for privatization?

23 A. I believe so.

24 Q. And one of Securus' defenses rests on the playing
25 of the preamble that the defense attorney may have

1 heard; is that right?

2 A. That is correct.

3 MS. BRANNON: Nothing further.

4 THE COURT: Anything more?

5 SPECIAL MASTER COHEN: No, Judge. Thank
6 you.

7 MR. CLYMER: No, Your Honor.

8 THE COURT: All right. May this witness be
9 excused? Mr. Martin, you're excused.

10 (11:16 a.m., testimony of Josh Martin
11 concluded).

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C E R T I F I C A T E

I, Kelli Stewart, a Certified Shorthand Reporter and the regularly appointed, qualified and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings.

I further certify that the foregoing transcript, consisting of 110 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED December 14, 2018.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR